



Old Dominion Association of Church Schools

Report from the State Capitol

January 25, 2018

Dear ODACS Friends,

Our standoff with the Virginia Department of Social Services has seen a new and interesting development. ODACS believes that the method of implementation employed by VDSS runs afoul of the law and represents a form of entrapment of our ministries. Last Friday, we sought the assistance of Delegate Bobby Orrock with seeking the opinion of Virginia's Attorney General on several questions. Those questions regard the legal authority that VDSS has to implement the new requirement as it has done. On Tuesday of this week, Delegate Orrock submitted the questions to the Attorney General on our behalf.

Our submission of questions to the Attorney General could have been averted had VDSS agreed to place a payment window on the Fieldprint web site now, thus allowing our ministries a way to opt out of receiving a federal subsidy. However, VDSS is refusing to do so. In a face-to-face conversation I had with the director of licensing last Thursday night, she plainly told me that they would not give our ministries the self-pay option until after September 30.

As we await a response from the Attorney General, it is important that our ministries continue to exercise patience. Advice from this office is that you continue to wait, to do nothing yet to change your current method of submitting background check requests. ODACS advises you not to schedule Fieldprint appointments until the Attorney General responds, at the earliest.

On the following pages is a copy of the text of our letter to Delegate Orrock.

The Honorable Bobby Orrock
PO Box 406
Richmond, VA 23218

January 19, 2018

Dear Delegate Orrock:

ODACS is requesting your help with seeking an opinion from the Attorney General regarding the answers to the following questions.

1. Is the use of federal Child Care and Development Block Grant funds by the Virginia Department of Social Services to subsidize fingerprint background checks permitted under the rules written by the federal Department of Health and Human Services?
2. Does the Virginia Department of Social Services have the legal authority to pay for a childcare center employee's fingerprint background check with federal funds without that childcare center certifying its compliance with the vendor agreement that usually accompanies the subsidy?
3. If the fingerprint background check for an employee of a Religious Exempt childcare center is paid for by the Virginia Department of Social Services using federal funds, does the Religious Exempt childcare center automatically become obligated to the requirements of the vendor agreement?
4. If the answer to question 3 is "Yes," does the answer change if the Religious Exempt childcare center reimburses the Virginia Department of Social Services for the cost of the fingerprint background check?
5. If the answer to question 3 is "No," does the Virginia Department of Social Services have the legal authority under the rules written by the federal Department of Health and Human Services to disperse Child Care and Development Block Grant funds *without* obligating a childcare center to the vendor agreement?
6. Does the use of taxpayer dollars by the state to pay for fingerprint background checks for church-run preschool and/or daycare ministries violate Virginia's Blaine Amendment?
7. If the answer to question 6 is "Yes," is the Blaine Amendment still violated under the reimbursement model that the Virginia Department of Social Services has suggested?

Background Information

Our concerns arise in part from recent communications with VDSS. On November 15, 2017, ODACS sent VDSS a memo with several questions related to the VDSS decision to pay for fingerprint background checks through September 30, 2018. Among the questions we asked were these.

1. What is the source of the money? Does it come from the Childcare and Development Block Grant, does it come from the General Assembly, or does it come from another source?

2. Will Religious Exempt childcare centers be required to sign any kind of certification in order to qualify for the subsidy? If so, what are the details of that certification?
3. Does this appropriation of taxpayer dollars require approval from the General Assembly? If so, how has that approval been granted?
4. Does such a subsidy create an issue with Virginia's Blaine Amendment? In other words, is it legal?

On December 6, 2017, Charlene Vincent responded to my inquiry by e-mail with the following answers.

1. "Federal Child Care and Development Fund dollars will be used for this."
2. "Child care providers that participate in the Child Care Subsidy Program must comply with the program requirements which can be viewed on the VDSS public website at http://www.dss.virginia.gov/files/division/cc/assistance/providers/vendor_agreements/center_vendor_agreement_with_inspection_requirements_rev112116.pdf."
3. and 4. "The Department cannot provide legal opinions or advice to private entities or individuals. We suggest that you consult your legal counsel regarding any questions which may require a legal interpretation."

On December 26, 2017, I sent another message to Charlene Vincent notifying her that our ministries wish to decline the federal subsidy and asking her to advise our ministries on how they can pay for the fingerprint background checks themselves. On January 16, 2018, Charlene Vincent answered by e-mail with the following response.

"I have spoken to DSS finance folks and they agree that you can send a check to reimburse DSS for the fingerprint checks.
Are you sending a check for all your member facilities or will each facility be sending their own reimbursement checks? It would be helpful if you could send me the names of all your member facilities that will be requesting reimbursement.
With each of the reimbursement checks please state that the check is to reimburse DSS for child care criminal background checks and include the names of the persons fingerprinted and whether or not they are an employee or a volunteer.
The charges are: Employees - \$57; Volunteers - \$38
The checks can be sent to DSS to the attention of Sandra Mosely at the below address."
If you have questions please let me know."

While we appreciate the spirit with which the reimbursement model has been suggested, we have lingering concerns about such an arrangement.

As we have stated often in the past, our concerns also arise from our understanding of the principle of Separation of Church and State. We have long been concerned that the current push by the state for increased control of our church-run preschools and daycares creates serious Church-State Separation questions. Despite the fact that some churches do not share this concern, the idea of using taxpayer dollars to subsidize church-run preschool and daycare ministries is very troubling to ODACS ministries.

A Possible Alternative

The VDSS Implementation Memo #4 of January 11, 2018, included the following statement near the end.

“After September 30, 2018, the Fieldprint website will include a payment screen. Programs should be budgeting for this expense beyond September 30, 2018.”

Since there will be a payment screen on the Fieldprint web site after September 30, it is difficult for ODACS to understand why there cannot be an optional payment screen now. We believe that the immediate inclusion of a payment screen on the Fieldprint web site may eliminate our immediate concerns and may possibly preclude the necessity of seeking an opinion from the Attorney General.

We appreciate your service to the Commonwealth and your consideration of our request.

Sincerely,

Dan Zacharias
Executive Director