



## **Old Dominion Association of Church Schools**

November 22, 2017

Memo to ODACS Ministries

Subjects: Does Kindergarten Fall Under Childcare Licensure Laws?  
Ratios for Religious Exempt Childcare  
Annual Paperwork Filing for Religious Exemption

Yesterday one of our schools contacted the ODACS office with a problem related to the annual paperwork they file with DSS verifying their compliance with Virginia's Religious Exemption from childcare licensure. The school operates a K-3 and a K-4 class under the Religious Exemption. After the paperwork had been properly filed, the local DSS licensing office contacted the school and told them that they had to include their K-5 enrollment figures for purposes of verifying compliance with the child/teacher ratios set forth in the Religious Exemption section of Virginia Code. **DSS was in essence about to require that the school follow the 1:10 teacher to student ratio for their K-5 class!**

Fortunately, this matter was resolved quickly and favorably. The DSS employee had requested the information in error. She subsequently acknowledged the error and withdrew the request.

However, the incident raises several questions and provides an opportunity for several reminders regarding the legal requirements under the Religious Exemption.

- Was the request a Freudian slip? (Answer: we may never know.)
- Has any other ODACS ministry received the same request? If so, how did that ministry respond?
- Are there any circumstances under which children age 5 or older must be included in the ratios that a ministry must report when filing the Religious Exemption paperwork?

Here are several important reminders about how the Religious Exemption works.

1. The term *childcare* in Virginia law can perhaps best be understood as meaning any care of children that does not fall under compulsory attendance law. This of course means that your K-12 classes are not considered childcare and therefore do not fall under DSS purview.
2. Your preschool classes, even though they may be in an academic setting, are considered childcare under Virginia law. That means that they must be operated either with a license from the state or with a Religious Exemption from licensure (Exemption #1 in Virginia Code). Of course, infant and toddler care are also considered childcare. Among the legal requirements that apply to preschool classes are those regarding staff/child ratios. (An additional option that may be opening up to more preschools is to operate under Exemption #12 which covers VCPE accredited preschools. While this option is worthy of consideration, ODACS still believes that the Religious Exemption must be vigorously defended. To date, only a handful of Montessori preschools have used Exemption #12.)

3. Your church ministries to children are exempt from licensure under the licensure exemption section of the Code (Exemption #10). This exemption covers church nurseries, Sunday school, VBS, AWANA, Master Clubs, etc.
4. Before- and after-school care must be operated under Exemption #1, the Religious Exemption. Consequently, each school needs to include ratio and other documentation for before- and after-school care in their annual Religious Exemption paperwork. The age-specific ratios in the Code then apply to your school-age children. Any school that does not have a preschool but does offer before- or after-school care needs to file for the Religious Exemption in order to ensure that they are operating legally.

If your ministry is ever asked to report information to DSS about any ministry that does not fall under the Religious Exemption, or if you have already received such a request, please contact the ODACS office as quickly as possible. ODACS will be happy to assist your ministry as it responds to any such inappropriate request.

Sincerely,

Dan Zacharias  
Executive Director

### **Child/Staff Ratios Under the Religious Exemption**

1:4 for ages 0 to 24 months  
1:10 for ages 24 months to 6 years  
1:25 for ages 6 years and older

### **Additional Ratio Requirements in the Code, § 63.2-1716, Section 3**

“Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children. In each grouping of children, at least one adult staff member shall be regularly present. However, during designated daily rest periods and designated sleep periods of evening and overnight care programs, for children ages 24 months to six years, only one staff member shall be required to be present with the children under supervision. In such cases, at least one staff member shall be physically present in the same space as the children under supervision at all times. Other staff members counted for purposes of the staff-to-child ratio need not be physically present in the same space as the resting or sleeping children, but shall be present on the same floor as the resting or sleeping children and shall have no barrier to their immediate access to the resting or sleeping children. The staff member who is physically present in the same space as the sleeping children shall be able to summon additional staff counted in the staff-to-child ratio without leaving the space in which the resting or sleeping children are located.

Staff members shall be at least 16 years of age. Staff members under 18 years of age shall be under the supervision of an adult staff member. Adult staff members shall supervise no more than two staff members under 18 years of age at any given time.”