



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

November 20, 2017

Memo to ODACS Ministries

Subjects: VDSS Fingerprint Background Check Memo  
VDSS Serious Injury Reporting Memo

### **Summary**

The Virginia Department of Social Services has recently issued two important memos to Religious Exempt childcare centers. One addresses the issue of fingerprint background checks, and the other addresses the issue of reporting serious physical injuries. This ODACS memo is intended to help our ministries understand and respond properly to these VDSS memos.

### **Follow Up**

We are scheduling an important conference call on Tuesday, November 28, at 10:00 a.m. After you have read this ODACS memo thoroughly, please make plans to have someone from your ministry participate in this call.

Dial In Number:  
Conference Code:

### **Part 1**

#### **VDSS Memo Dated October 12, 2017**

#### **Subject: DSS Funding of Fingerprint Background Checks - Implementation Memo #3**

On October 12, 2017, VDSS releases a memo announcing that they would cover the initial cost for fingerprint background checks. Among the details included in this memo were the following:

- Funding will be temporary, ending on September 30, 2018, or until the funding is exhausted, whichever comes first.
- The cost of the background check for an employee or applicant will be \$57.00. The cost for a volunteer will be \$38.00.
- All background checks will be performed through a single provider, Fieldprint. VDSS had already announced this in an earlier memo, but it was repeated in the October 12 memo.
- Although the law came into effect on July 1, 2017, with an implementation date of September 30, 2017, VDSS has obtained a one-year waiver from the federal government.
- Background checks will be “phased in.” In other words, once VDSS is ready to begin implementation, they will not be able to require *all* childcare centers to submit fingerprints at one time. The memo goes on to say that further information about the phase in will be included in a future memo.

This memo raises several concerns from an ODACS perspective. We have submitted the following questions to VDSS; however, we have not yet received a response.

1. How many dollars does VDSS have available to use to cover the initial cost of the fingerprint background checks?
2. 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?
3. 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?
4. Does this appropriation of taxpayer dollars require approval from the General Assembly? If so, how has that approval been granted?
5. Does such a subsidy create an issue with Virginia's Blaine Amendment? In other words, is it legal?

Question #5 is perhaps the most important of these questions. In addition to a potential Blaine Amendment violation, the direct appropriation of government funding to our church-run childcare ministries raises the question of Separation of Church and State. ODACS ministries historically have insulated themselves from government intrusion by declining government funding, which virtually always is attached to further control measures. It is unclear whether VDSS will allow the option of paying for the background checks should we choose to decline the subsidy; ODACS does plan to look into that question further. However, despite any differing guidance from any other organization, ODACS ministries should be aware that once VDSS has answered our questions, and once implementation of the law is imminent, ODACS will likely advise our ministries to decline the subsidy.

Additionally, VDSS knows that the state law requiring fingerprint background checks for Religious Exempt childcare centers has a one-year sunset clause with a June 30, 2018, expiration date. This means that we are guaranteed to have another battle over this issue in the 2018 General Assembly. ODACS will continue to oppose the law using the same arguments that we used in 2017. **In other words, despite any impression the VDSS memo may give to the contrary, the new requirement is not yet a "done deal."**

Another important point is that the memo gave some people the impression that implementation of the law is imminent. However, a careful reading of the memo, along with other considerations, leads us to believe that implementation is still not imminent. At any rate, ODACS ministries should not feel pressure to come into compliance with the law quickly; there is no way to comply until VDSS announces the "phase in" of the Fieldprint-handled background checks.

## **Part 2**

### **VDSS Memo Dated November 13, 2017**

**Subject: Notification to the Department of an Injury Requiring outside Medical Treatment (IROMT)/ and Death of Children While Under the Center's/Provider's Supervision**

On November 13, 2017, VDSS released a memo requesting that Religious Exempt childcare centers voluntarily comply with VDSS efforts to collect data on deaths and serious physical injuries that occur in childcare settings. Among the details included in this memo were the following:

- Childcare centers that are required to report are under that requirement because of federal funding under the Child Care and Development Block Grant.
- Reporting is not required of Religious Exempt childcare centers that do not receive the federal subsidy. VDSS is *requesting* that Religious Exempt childcare centers file reports *voluntarily*.
- The CCDBG requires the state to collect data on three types of incidents at childcare centers: deaths, serious injuries, and substantiated child abuse.

- The definition of a reportable serious injury is “any injury that occurs while the child is under the supervision of a center/provider and requires outside medical treatment.” Outside medical treatment would include treatment sought by the center itself, such as a call to 911. It would also include treatment sought by a parent or guardian after childcare hours for an injury occurring at the childcare facility.
- Reporting must be done online. VDSS provides an easy-to-use reporting page on their web site.
- A report of a death must be submitted within one day. A report of a serious physical injury must be submitted within two days.
- Providers should maintain copies of all reports filed.

As in the case of the fingerprint background check memo, this memo raises several concerns from an ODACS perspective. We have submitted the following questions to VDSS; however, we have not yet received a response.

1. Is there any potential legal liability for approved subsidy providers that fail to report serious physical injuries? Is there any potential legal liability for non-subsidy programs that do not report serious physical injuries?
2. Has VDSS provided to the federal government recent data regarding instances of substantiated child abuse that occur in child care settings? If so, is that data available to the public?
3. Do the CCDBG serious physical injury reporting requirement and the subsequent VDSS serious physical injury reporting request have their origins in the UN Convention on the Rights of the Child?
4. Does “open, transparent accountability to the public” not already exist in Virginia childcare? Has there been a demonstrable problem with childcare providers successfully hiding serious physical injuries from parents and legal guardians?
5. Does VDSS anticipate any effort to change or expand the definition of “serious injury” in the future? If so, what changes are anticipated?

ODACS was involved heavily in the negotiations on SB 1239 that took place during the 2017 General Assembly. The bill included a requirement that Religious Exempt childcare centers report serious injuries and deaths; that requirement was the source of significant debate between ODACS and VDSS, with Senator Hanger’s office acting as liaison. ODACS adopted the following posture during those negotiations.

- ODACS could concede the requirement to report deaths. On one hand, we do not understand why a reporting requirement is necessary since such a tragedy would invariably be front-page news, making VDSS collection of data a fairly easy task. Nevertheless, we could see no real burden that a reporting requirement would place on our ministries for the same reason; the tragedy would be front-page news anyway.
- ODACS has mixed feelings about a requirement to report serious physical injuries. On one hand, we welcome any accurate comparison of the safety records of Religious Exempt childcare centers with the safety records of licensed centers. On the other hand, we are concerned that such a requirement, once in place, could evolve into a tool for state overreach or control. Furthermore, we believe that primary accountability for such incidents is to the parents, not to the state; and we are confident that our ministries do not hide serious injuries from parents.

The primary concerns of ODACS were twofold. The first concern was that a reasonable definition be included in State Code rather than in VDSS regulations; this would give ODACS greater ability to

protect the definition and to prevent any future unreasonable expansion of the definition. The second concern was that the word *physical* be added to the term serious injuries, making the term *serious physical injuries*. Though the negotiations succeeded at reaching a definition in Virginia Code, the reporting requirement ultimately failed when Governor McAuliffe vetoed the bill.

Prior to the November 13 memo, ODACS was unaware of the fact that the VDSS collection of data is a federal requirement under the Child Care and Development Block Grant. Fortunately, and unlike the fingerprint background check requirement, the CCDBG does not apply this particular requirement to childcare centers that do not receive CCDBG funding. Nevertheless, the CCDBG connection to this request demonstrates that the definition of *serious injuries* is currently under federal bureaucratic control. If the definition of *serious physical injuries* were in Virginia Code, ODACS would feel much more comfortable about advising our ministries to report.

So then, given all of that history, here is an initial ODACS response to the VDSS request.

1. ODACS ministries are advised to cooperate with the VDSS request that Religious Exempt childcare centers report the death of a child while under their care. The report should be filed online within one day of the child's death, and a corresponding written report should be kept on file at the center.
2. ODACS urges caution about cooperation with the request to report serious injuries. While each ministry is free to choose to report or not to report, ODACS believes that there are too many unanswered questions about the request, causing us significant doubt about whether cooperation would be prudent at this point.
3. ODACS ministries are reminded that, under Virginia law, their employees and volunteers are mandated reporters of suspected child abuse. **This mandate applies not only to your daycare and preschool but also to your K-12 classes, your Sunday school, your church nursery, and any other ministries to children provided by your church!** Furthermore, ODACS recommends that each ministry adopt written policies about how it will interact with the suspected child abuse reporting mandate, and that all of your employees and volunteers receive annual training regarding your ministry's policies and regarding the mandate itself. ODACS has received a number of calls in the past few months from ministries seeking advice about how to interact with this complex law. It is clear that while some of our churches and church schools do a good job of interacting with the reporting mandate, quite a few of our ministries still do not understand the mandate and are not training their people about their own individual liability under the mandate. Another problem appears to be that some ministries view the mandate as applying to their school ministry only and not to other church ministries. ODACS has offered several convention workshops on this topic over the years, but usually only two or three people attend. We would be happy to visit your ministry and present that session to your people. ODACS wants to offer any help possible to protect your ministry from potential liability under this important law. The push by the federal government to collect data related to child abuse in childcare centers underscores the urgent need for our ministries to understand the law and to adopt carefully written policies for their own people.

All of the information in this memo will be on the table for discussion during the conference call on November 28. Please make plans to join us on that call, and thank you for your careful attention to these matters.

Sincerely,

Dan Zacharias  
Executive Director