



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

### **IMPORTANT UPDATE – RECENT GOVERNMENT COVID-19 ACTIONS**

- **VDSS Childcare FAQ about Childcare Safety During COVID-19**
- **Governor Northam’s Stay at Home Order**
- **CARES Act and Federal Funding for Nonprofits**

March 31, 2020

Dear ODACS Friends,

In the past few days, governments at both the state and federal levels have taken several additional actions in response to the COVID-19 emergency. There has been a lot of information to work through, and much more information will be forthcoming in the days ahead. It is the hope of ODACS that this update will address some of the most important questions that may affect our churches and Christian schools.

### **VDSS Childcare FAQ about Childcare Safety During COVID-19**

On March 30, VDSS published a new document of frequently asked questions related to childcare safety during the COVID-19 emergency. ODACS has placed a link to the document on its Child Care Issues page.

<http://vaodacs.com/child-care-issues/>

Q: Does the VDSS childcare FAQ change any of the previously published information about closure of K-12 schools and continuing operation of childcare centers and private preschools?

A: No. All K-12 schools must continue to remain closed through the remainder of the academic year. Childcare centers and private preschools may continue to operate as long as they follow the safety guidelines that VDSS has published.

Q: Must childcare centers now serve only children of essential personnel?

A: This is a very important question. In a previous update, ODACS advised its ministries that children of essential personnel must be given first priority but that a center is not required to serve *only* those children. In the March 30 FAQ, VDSS gives these rather broad statements in answer to this question:

*“Programs are encouraged to implement business practices that will best meet the needs of essential personnel. Any changes in care arrangements necessary to accomplish this should be clearly communicated with families.”*

*“Until there is specific state definition of essential personnel as relates to the COVID-19 pandemic, programs should work closely with families and use their discretion to determine who may be essential personnel.”*

Based on these VDSS statements, ODACS is not changing its advice with regard to this question.

Q: What is the primary purpose of the FAQ document?

- A: While the VDSS FAQ document does not impose any new COVID-19 regulations, it offers many helpful tips for how to keep children safe in the childcare setting, for constructive and creative activities to keep children busy while practicing social distancing, and for what to do when a child or adult in the childcare setting exhibits COVID-19 symptoms. One interesting example of a suggested activity is dividing a gymnasium into two “rooms” so that nine children can play on one side while another nine play on the other side. The FAQ also suggests giving children more time for outside play than usual.
- Q: Is there any possibility that the governor will order all childcare centers to close?
- A: We don’t know for sure. However, it appears from the FAQ that VDSS is working hard to ensure that childcare centers will be able to remain open throughout the COVID-19 emergency.

### **Governor Northam’s Stay at Home Order**

On March 30, Governor Northam issued Executive Order Number 55, a temporary stay at home order. ODACS encourages each of its ministries to read the order carefully.

[https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf)

- Q: Does the stay at home order increase the possibility that someone violating the governor’s order may be charged with a crime?
- A: ODACS believes that the answer to this question is Yes. The order specifies that any violation of certain portions of the order will be considered a Class 1 misdemeanor. Furthermore, the governor emphasized this provision of the order in his comments during the press conference in which he announced the order. Class 1 misdemeanors are punishable by up to 12 months in jail, a fine of up to \$2,500, or both.
- Q: Does the order prohibit all church gatherings of any kind?
- A: No. While gatherings of more than 10 people are strictly prohibited, 10 or fewer people may still gather at a church legally, so long as they practice social distancing. Part 1 of the order includes this statement:  
*“Individuals may leave their residences for the purpose of:  
 f. Traveling to and from one’s residence, **place of worship**, or work.”* (emphasis added)
- Q: Does the order prohibit churches from conducting drive-in services, where more than ten people sit in their cars and listen to the preaching?
- A: ODACS is uncertain about the correct answer to this question. Part 2 of the order includes the following statement which may be pertinent.  
*“All public and private in-person gatherings of more than ten individuals are prohibited. This includes parties, celebrations, **religious**, or other social events, **whether they occur indoor or outdoor**.”* (emphasis added)  
 Taking this statement at face value would seem to indicate that the answer to the question is No. Since technology makes it very easy for a church to broadcast a service online, ODACS recommends that churches make this their first option. If a church still wishes to consider conducting a drive-in service, ODACS recommends consulting with your local law enforcement agency first. Pastors certainly do not want to place their church members in a position of potentially being charged with a Class 1 misdemeanor.
- Q: Does the order prohibit our faculty from coming to the property to continue our school’s program of online instruction?
- A: So far as ODACS can tell, the governor’s orders are silent on this question. The item that comes closest to suggesting an answer is Part 3, which applies specifically to institutions of higher

education. Part 3 allows those institutions to conduct remote learning so long as social distancing is practiced on site.

ODACS gives the following advice to schools that are offering online instruction.

1. Allow any teacher who can do so to conduct the online instruction from home. Encourage teachers to use this option if at all possible.
2. To the extent possible, use recorded videos for instruction rather than live streaming. Doing so may provide opportunity for staggering the times when faculty are present on campus, thus minimizing the number of individuals present at any one time.
3. Maintain social distancing on campus among faculty that are present at any one time.

## **CARES Act and Federal Funding for Nonprofits**

On Friday, March 27, President Trump signed the single largest stimulus bill in our nation's history, the \$2.2 trillion CARES Act, in response to the national COVID-19 pandemic. Included in the bill is provision for federal loans to help small businesses survive any financial crisis brought on by the government's actions to address the pandemic. These small business loans will be made available through to Small Business Administration to nonprofits, including churches and Christian schools.

**ODACS strongly cautions its ministries against applying for such loans.** To understand why, it is helpful to know the historical ODACS position as well as some very recent history that informs this advice.

Since its founding in 1976, ODACS has taken a strong stand on the principle of Separation of Church and State. On one hand, we understand that this principle is often misapplied by those who oppose government officials being guided by their strongly held religious beliefs; however, we also believe that, when correctly understood, the principle of Separation of Church and State provides important safeguards against both a church-run state and a state-run church.

The historic ODACS understanding is that, when applied to matters of finance, the principle of Separation of Church and State works in two ways. The first is that churches and their ministries should be free from government taxation. The second is that the state should not subsidize churches and their ministries. These two applications of the principle foster the church's freedom to worship and to serve God according to the dictates of its own convictions and conscience. We believe that departures from these two applications inevitably serve to undermine that freedom.

More recently, in 2017 and 2018 ODACS was involved in a situation in which the state attempted to force our ministries to accept a federally funded benefit, namely that the state would use federal funds to pay for fingerprint background checks for childcare employees. VDSS was unclear about what new mandates would accompany the funding. ODACS asked VDSS to give its ministries the option to self-pay for the background checks, and VDSS refused. The difference of understanding between ODACS and VDSS led to our submitting an opinion request to the state attorney general's office, a list of seven questions about the legality of the VDSS policy. In the end, the attorney general's office forced VDSS to change its policy and then declined to answer the questions. These actions gave ODACS a pretty good idea about what the answers to our questions would have been. Throughout this process, we cited the principle of Separation of Church and State as the underlying principle that informed our concerns and requests. You can review this history by reading several ODACS memos published in 2017 and in 2018, posted on our Child Care Issues page.

<http://vaodacs.com/child-care-issues/>

Also, ODACS believes that our ministries will soon be facing serious challenges to their tax exempt status. The Equality Act, which Congress failed to pass in 2019, and the General Assembly's LGBTQ bills, which currently await our governor's signature, pose a threat to tax exemption for churches in addition to posing other serious financial threats to churches. Separation of Church and State will be one of the foundational principles which will need to be advocated if our ministries are to remain free to teach God's truth about human gender, human sexuality, and marriage. ODACS

believes that accepting taxpayer funds in any form, either directly or indirectly, will weaken a ministry's ability to stand on the principle of Separation of Church and State during the challenges that lie ahead. We've already heard from other quarters the accusation that goes something like this. "If they accept government money, then they shouldn't be allowed to discriminate."

Please keep this caution in mind as you examine the following questions and answers.

Q: What requirements will be placed upon a ministry that seeks a loan under the CARES Act?

A: While some basic requirements are already known, such as having been in operation on a certain date and having been adversely affected financially by the COVID-19 pandemic, we do not yet know what government mandates will be attached to the funding. Remember that the next step after passage of a bill is the writing of regulations by the bureaucracy. It is ODACS's understanding that CARES Act regulations are scheduled to be completed by April 11.

Q: Since churches are considered to be 501(c)(3) organizations without having to file for 501(c)(3) status, will churches who have never filed for 501(c)(3) status still be eligible for loans under the CARES Act?

A: Again, we are uncertain about the answer to this question and likely will not be able to know until regulations are released.

Q: Are CARES Act loans "forgivable"?

A: Yes, they are "forgivable" when used for certain expenses such as payroll and utilities, in order to give relief from financial strain caused by the pandemic. The effect of this provision, of course, is to turn a loan into a subsidy, regardless of whether the "forgiveness" is granted directly to the ministry or to local lending entity.

Q: If our church or Christian school applies for and is granted a small business loan under the CARES Act, will we be stepping onto a slippery slope?

A: ODACS believes that accepting CARES Act funding will very likely place your ministry in a precarious position in the near future. If your ministry disagrees with the ODACS advice, we would certainly urge you to read all of the fine print very carefully before signing up for federal assistance.

The American Association of Christian Schools has published more details about the CARES Act, as well as about the Family First Coronavirus Response Act, on its web site. We encourage you to make use of the AACS resources as you figure out how to address the financial challenges that your ministry and your employees are currently facing.

AACS COVID-19 Legislative and Legal Information

<https://www.aacs.org/covid-19/legislative-legal-information/>

AACS COVID-19 Podcasts

<https://www.aacs.org/covid-19/podcasts/>

Once again, I hope that this information will prove helpful to your ministry. I appreciate the continued trust that you are placing in ODACS, your prayers for me and my family, and the many conversations that we have been having and will continue to have as we face this challenge together. God bless!

Sincerely,

Dan Zacharias  
Executive Director