



Old Dominion Association of Church Schools

IMPORTANT UPDATE – VDSS CHANGES RATIO POLICY FOR RECDC’S!

September 18, 2019

Dear ODACS Friends,

Today many of you received a memo from VDSS with some very encouraging news. In the memo, VDSS remarkably admits that its inspectors have been applying an incorrect interpretation of section 63.2-1716.A.3 of Virginia code! The memo then states that all inspectors have been instructed “to cease the use of this incorrect interpretation.” By way of reminder, here is some background on the issue, followed by an explanation of how it affects our ministries.

You will recall that on July 12, ODACS sent out a memo informing our schools of the new ratio laws and of three important questions. The discussion of the third question is copied below.

3. What is the meaning of this important sentence in Virginia Code? “In each grouping of children, at least one adult staff member shall be regularly present.” (63.2-1716.A.3)

This is another extremely important question; please read this section thoroughly and carefully!

There are two possible interpretations of this sentence in the Code.

Interpretation #1 – The words *each grouping* refer to age groupings on the ratio chart. Under this interpretation, a group of children with different ages cannot be considered as a single group under the care of one adult. For instance, if the group includes one four-year-old, one six-year-old, and one nine-year old, there should be three adults watching the three children. If a VDSS inspector were to find this group being cared for by one adult, the inspector would have no option but to cite the provider for a violation.

Interpretation #2 – The words *each grouping* refer simply to each group of children being cared for, regardless of the ages. Under this interpretation, a group of children with mixed ages is considered a single group, and the ratio of the youngest child present would be the ratio that applies to the group. In the scenario mentioned earlier, since the ratio for four-year-olds is 1:8, the center would be in compliance. If a VDSS inspector were to encounter the same scenario, the inspector would have no grounds to cite the provider for a violation.

ODACS understands Interpretation #2 to be the correct interpretation. This understanding is based on face-to-face conversation with state-level licensing officials during the licensure exemption study group meetings in 2016. However, we have become aware that since July 1, some VDSS inspectors have cited Religiously Exempt centers for violations based on Interpretation

#1. To our knowledge, no ODACS ministry has yet been cited in this way; however, our ministries need to be prepared for the possibility. Earlier this week I had a long phone conversation with the administrator of a Religiously Exempt center that is not a member of ODACS. On July 2, the center was cited for a ratio violation after debating with the inspector about the interpretation of that sentence in the Code. The administrator is preparing to appeal the inspector's decision. The administrator also told me that she has heard of several other centers being cited in the same way, and even of some that have ceased operations because of this problem.

If your ministry encounters a problem related to this part of the ratio requirements, please contact the ODACS office immediately! We will be happy to work with you to resolve the problem.

Additionally, we intend to seek a legislative solution to this problem. I plan to draft proposed language to help clarify the Code, and then we will ask a couple of General Assembly members to sponsor a bill. Remember that all 140 General Assembly seats are up for election this November, and the election results will have a direct impact on this particular effort.

Since the July 12 memo was sent, we also communicated our concerns to the state licensing director and requested that VDSS inspectors begin applying the correct interpretation of the Code. Also, at least two ODACS ministries were inspected and told that the first interpretation was correct and that they would not be able to continue to apply the second interpretation in practice.

Subsequent to our appeal, VDSS referred the matter to the Attorney General's office. The licensing director and I had several e-mail communications over the past weeks, and she asked for our patience as they worked on the problem. I know that many people around the state have been praying about this matter; today God answer those prayers in a remarkable way! A copy of today's VDSS memo is attached to this update.

ODACS had advised our ministries to continue to apply the first interpretation while we made our appeal to Richmond. Now we know that from now on VDSS inspectors will apply that same interpretation whenever they show up at your ministry. Praise the Lord!

This is a somewhat small victory in light of the overall push toward universal licensure of childcare, but it is nevertheless a tremendous answer to prayer. Twice now in the past two years, an ODACS challenge to a VDSS policy has been considered by the office of the Attorney General, and in both cases God worked on behalf of our ministries so that the very unfriendly policies were changed in our favor!

Many challenges remain, and there is yet much work to be done, but today is a day to thank God for His intervention in a situation that had the potential to do significant harm to our church-run preschools and daycares. Thank you for your prayers and support!

Sincerely,

Dan Zacharias
Executive Director



COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

DATE: September 17, 2019

TO: Religious Exempt Child Day Centers (RECDC)

FROM: Tara Ragland, Director
Division of Licensing Programs

SUBJECT: Child to Staff Ratios

This memo provides updated information on the department's interpretation of the following section 63.2-1716.A.3. of the Code of Virginia.

§ 63.2-1716(A) (3) The child day center employs supervisory personnel according to the following ratio of staff to children:

- a. One staff member to four children from ages zero to 16 months.
- b. One staff member to five children from ages 16 months to 24 months.
- c. One staff member to eight children from ages 24 months to 36 months.
- d. One staff member to 10 children from ages 36 months to five years.
- e. One staff member to 20 children from ages five years to nine years.
- f. One staff member to 25 children from ages nine years to 12 years.

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. The Code of Virginia requires child day centers operated by religious institutions to follow the ratio requirements in 63.2-1716(A)(3). Currently, the department's interpretation of § 63.2-1716(A)(3) for at least one adult staff member to be regularly present in each grouping of children requires a separate staff member for each age group described in the ratios listed in the Code. Recently, the department learned that the current interpretation of § 63.2-1716(A)(3) is incorrect. Effective immediately, licensing inspectors have been directed to cease the use of this incorrect interpretation.

If you have any questions, please contact your licensing inspector.

Thank you.