



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

### **Urgent ODACS Update Response to State Mask Mandate for Schools**

August 13, 2021

In a press conference on August 5, 2021, Governor Ralph Northam referenced SB 1303, a bill passed by the General Assembly earlier this year, as a means of implying that a mask mandate exists for all public schools in Virginia. On August 12, 2021, the State Health Commissioner issued an edict requiring all persons age 2 and older in all public and private schools in Virginia to wear masks indoors.<sup>1</sup> ODACS has carefully studied SB 1303, the governor's statements, the State Health Commissioner's edict, and other information pertinent to the mask mandate. The following observations and advice are based on that analysis.

1. The Health Commissioner's edict cites Senate Bill 1303 as part of its rationale. However, no provision of SB 1303 can be construed as legally binding on any private school in Virginia since the bill expressly applies to public schools only.<sup>2</sup>
2. The Health Commissioner's edict cites Virginia Code §32.1-13 and §32.1-20 as the legal authority for the State Health Commissioner to issue such an edict. Section §32.1-13 vests authority for such emergency orders in the Board of Health, and section §32.1-20 gives the commissioner authority to act on behalf of the board when the board is not in session. This gives rise to an important legal question. Does the commissioner have singular authority to issue an emergency rule that is in force until the time of the board's next meeting only, or does the commissioner have authority to issue a rule that is in force beyond the time of the board's next meeting? In other words, is the Health Commissioner exceeding his authority under §32.1-13 and §32.1-20?
3. The Health Commissioner's edict cites emerging data that shows that the Delta variant is more contagious than past versions of the virus. However, the edict does not disclose the fact that emerging data also suggests that the Delta variant is much less dangerous than past versions of the virus. As of August 12, while the number of COVID cases in Virginia is currently increasing, according to the VDH COVID Dashboard, the number of deaths is not increasing.<sup>3</sup>
4. The Health Commissioner's edict neglects to remind the public that children tolerate the virus far better than elderly adults do. According to the VDH COVID Dashboard, of the 11,583 COVID-related deaths in Virginia as of August 12, only 2 have been of individuals ages 0-9, and only 7 have been of individuals ages 10-19. The vast majority of deaths have been of senior adults; 72.4% of the deaths have been of individuals age 70 and older, and 88.9% of the deaths have been of individuals age 60 and older.<sup>4</sup>
5. The Health Commissioner's edict cites the current rates of vaccination among teenagers as a reason for the necessity of the mask mandate, implying that higher vaccination rates could lead to a lifting of the mask mandate. Despite this rationale, however, the edict requires masks of all individuals, regardless of vaccination status. This kind of mixed messaging contributes to public mistrust of government orders.
6. The Health Commissioner's edict fails to take into account the already high toll that COVID measures have inflicted on Virginia students in terms of emotional and mental health.

Despite having heard claims to the contrary, ODACS has seen no credible scientific evidence to suggest that masks are effective at slowing the spread of COVID-19. The history of the virus in our state last winter, when the numbers of cases and deaths hit their peaks despite ongoing school closures and mask mandates, suggests that the virus will run its course regardless of state-imposed mandates, or in spite of a lack thereof.

In stark contrast to Virginia's public schools, ODACS schools successfully and safely remained open for in-person instruction throughout the 2020-2021 school year. Schools proved that they can be trusted to make their own decisions about mitigating measures. When outbreaks occurred, schools closed temporarily and then reopened. We are not aware of any deaths related to COVID outbreaks in our schools over the course of the 2020-2021 school year.

**In view of this analysis and of these observations, ODACS believes that schools have a right to choose and to implement their own COVID mitigating policies. A school that wants to require masks of its students and teachers should be free to do so. However, ODACS advises its ministries to neither require nor forbid the wearing of masks by students and by teachers. We believe that individuals adults have a right to free choice in the matter of masks, and we believe likewise that parents have a right to free choice on behalf of their own children in the matter of masks.**

Having given that advice, ODACS reminds schools of the governor's warning in his August 5 press conference. "That law [SB1303] was passed by a strong bipartisan vote of the legislature, and I expect school divisions to follow it. If they choose not to follow it, they should have a frank discussion with their legal counsel."<sup>5</sup> At face value, this statement is directed at public schools; however, ODACS believes that private schools should not assume that the state will not aggressively try to enforce the health commissioner's edict upon them as well.

ODACS also reminds schools that the Health Commissioner's edict sets forth a list of several exemptions to the mandate, including for a sincerely held religious objection. If a school chooses to require masks of its teachers and students, it should be diligent to make parents and teachers aware of these exemptions.

Furthermore, ODACS is deeply concerned that the mask edict for students may be a deliberate precursor to mandated COVID shots for children. We observe that the COVID shots are still approved for the public under emergency authorization only. The shots are experimental, with completion of clinical trials still many months in the future. Long term effects are still unknown. The oversimplified message that "vaccines are safe and effective" is premature. While some news of breakthrough infections is being reported, messaging from government and media appears to be deliberately silent about adverse effects and fatalities that sometimes closely follow administration of the shots. Many individuals in ODACS ministries know of friends and acquaintances who have died or who have had serious adverse effects very shortly after having received a COVID shot. These anecdotes never seem to be newsworthy, but the list of occurrences continues to grow alarmingly. We therefore believe that parents have a right to freedom of choice regarding COVID shots for their children and that adults have a right to freedom of choice regarding COVID shots for themselves.

Finally, please join me in praying for God's protection for our schools and churches, for safety and health for our students and teachers, and for another full school year of quality in-person academic and spiritual instruction!

Sincerely,

Dan Zacharias  
Executive Director

<sup>1</sup> [https://www.governor.virginia.gov/media/governorviriniagov/governor-of-virginia/pdf/PHE-Order\\_K-12-8-12-2021.pdf](https://www.governor.virginia.gov/media/governorviriniagov/governor-of-virginia/pdf/PHE-Order_K-12-8-12-2021.pdf)

<sup>2</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0456+pdf>

<sup>3</sup> <https://www.vdh.virginia.gov/coronavirus/covid-19-in-virginia-cases/>

<sup>4</sup> <https://www.vdh.virginia.gov/coronavirus/covid-19-in-virginia-demographics/>

<sup>5</sup> <https://www.youtube.com/watch?v=fz0AxVMeotA>