



October 24, 2005

FLSA2005-42

Dear *Name\**,

This is in response to your letters inquiring whether Academic Advisors and Intervention Specialists (Advisors) at a community college in *Name\** (College) qualify for exemption from minimum wage and overtime requirements under section 13(a)(1) of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 213(a)(1). This provision exempts employees employed in a bona fide executive, administrative, or professional capacity, "including any employee employed in the capacity of academic administrative personnel." The regulations regarding the section 13(a)(1) exemption can be found in 29 C.F.R. Part 541, revised effective August 23, 2004 (69 Fed. Reg. 22,122 (Apr. 23, 2004)).

You state in your inquiry that these Advisors assist students in their academic pursuits by aiding them in their class selection, educational goals, and graduation requirements. In particular, your letter and the job descriptions you provided state that the primary responsibilities of both Academic Advisors and Intervention Specialists include orienting students regarding admissions, placement testing, registration processes, policies, procedures, resources and programs; reviewing academic records, placement tests and other standardized test results with students in order to develop course selections consistent with their career choices and degree requirements; and developing a term-by-term schedule and an outline of a program of study. Employees in both positions also review degree audits and transcripts to verify the fulfillment of graduation requirements. With regard to students with poor academic performance, they have authority to override holds in the student database system and permit students to register after considering the individual student's needs. The employees also assist students in overcoming academic difficulties, as well as learning, psychological, or physical disabilities. While the Advisors do participate in college recruitment activities, you state that these duties are performed less than 20 percent of the time and are not a primary duty. In addition, the Intervention Specialists are also responsible for teaching life skills courses.

The exemption for academic administrative employees is contained in 29 C.F.R. § 541.204 (copy enclosed). This section specifically recognizes the exempt status of employees whose primary duty is to perform "administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision" and who meet the salary tests. 29 C.F.R. § 541.204(a)(2). An "educational establishment" is an "elementary or secondary school system, an institution of higher education or other educational institution." 29 C.F.R. § 541.204(b). Section 541.204(c) describes work "directly related to academic instruction or training" as "work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education." The regulation further states that employees engaged in academic administrative functions include "academic counselors who perform work such as administering school testing programs, assisting students with academic problems, and advising students concerning degree requirements." 29 C.F.R. § 541.204(c)(1). Therefore, based on your description of their primary duties, it is our opinion that the Academic Advisors and Intervention Specialists at the college are exempt from the overtime and minimum wage requirements contained in the FLSA pursuant to section 13(a)(1) of the Act and the regulations, 29 C.F.R. § 541.204, assuming that the advisors' compensation meets the exemption's salary requirements. The academic administrative exemption requires that employees be compensated on "a salary or fee basis at a rate of not less than \$455 per week" or "on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which [they are] employed." 29 C.F.R. § 541.204(a)(1).

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that



this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor. This opinion is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. See 29 C.F.R. §§ 790.17(d), 790.19; *Hultgren v. County of Lancaster*, 913 F.2d 498, 507 (8th Cir. 1990).

We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.  
Deputy Administrator

Enclosures: 29 C.F.R. §§ 541.200-.204

*\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*