



October 13, 2005

FLSA2005-39

Dear *Name\**,

This is in response to your letter inquiring whether substitute teachers for kindergarten through twelfth grade for “the District,” a public school district, qualify as exempt teachers under the professional exemption contained in the Fair Labor Standards Act (FLSA) section 13(a)(1) and regulations, 29 C.F.R. Part 541 (copy enclosed). You also ask whether any distinction is made between non-certified substitute teachers with a bachelor’s degree and those without a degree in the application of this exemption. It is our opinion that either class of substitute teacher may qualify for exemption if the duties test is met.

The District employs numerous substitute teachers, some of whom hold teaching certificates, while some do not. Additionally, some substitute teachers have a bachelor’s degree, while others do not. District policy requires that substitute teachers who do not hold a teaching certificate must have at least 60 hours of college-level credits. The duties of the substitute teacher include instructing students regarding a variety of classroom topics and courses of instruction, supervising students during the school day, making attendance reports, attending faculty meetings, grading work given to students during the day and preparing lesson plans for the following day, and special assignments given by the regular teacher or the principal.

Please note that the Department of Labor issued revisions to the Part 541 regulations that exempt certain executive, administrative, and professional employees that were published as a final rule in the *Federal Register* on April 23, 2004 (69 Fed. Reg. 22122). The revised Part 541 regulations went into effect on August 23, 2004.

Substitute teachers must be evaluated on an individual basis to determine whether they qualify for the teacher exemption contained in the Regulations at 29 C.F.R. § 541.303. This regulation exempts “any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed.” 29 C.F.R. § 541.303(a). Having a primary duty of teaching “includes, by its very nature, exercising discretion and judgment.” Wage and Hour Division Fact Sheet #17D (copy enclosed). The duties of the substitute teachers qualify them for the exemption if their primary duty is teaching and imparting knowledge in an educational establishment. Substitute teachers whose primary duties are not related to teaching students—for example, performing general clerical or administrative tasks for the school unrelated to teaching their assigned students, or manual labor—do not qualify for the teaching professional exemption.

Section 541.303(c) specifies that possessing a teaching certificate is one clear method of identifying employees the regulations contemplate as qualifying for the exemption. Those substitute teachers whose primary duty is teaching and who possess a teaching certificate would therefore qualify for the teacher exemption. “However, private schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher’s certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.” 29 C.F.R. § 541.303(c). Thus, substitute teachers whose primary duty is teaching qualify for the exemption whether or not they hold a teaching certificate. Based upon your description of the substitute teachers’ duties, we conclude that their primary duty is teaching.

Moreover, there is no minimum educational or academic degree requirement for bona fide teaching professionals in educational establishments. Thus, the application of this exemption is not dependent upon possessing a bachelor’s degree. Those substitute teachers who are not certified, but who do



work as teachers, are within the teaching professional exemption whether or not they possess an advanced academic degree.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of 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 questions presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to a 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 letter 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. Part 541  
Fact Sheet #17D

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