

FLSA 1201

July 28, 1987

This is in further response to your letter concerning the application of the Fair Labor Standards Act (FLSA) to certain employees *** of School District (the School District). You specifically wish to know how to compute overtime pay under FLSA for school bus drivers compensated on a flat rate basis. We regret the delay in responding to your inquiry.

The FLSA is the Federal law of most general application concerning wages and hours of work. It requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. The provisions of FLSA apply to all employees of State and local governments except to those who are specifically excluded in sections 3(e)(2)(C) of FLSA and to those who may qualify for exemption from the minimum wage and/or overtime pay requirements of FLSA.

On January 16, the Department of Labor published final regulations, 29 CFR Part 553, which implement the Fair Labor Standards Amendments of 1985. These regulations contain rules concerning statutory exclusions and exemptions recordkeeping requirements, and compensatory time provisions which apply to State and local government workers in general, in addition to specific rules for volunteers and for fire protection and law enforcement employees. A copy of the regulations is enclosed for your information.

In your letter, you state that the School District pays its bus drivers \$33.32 per day for 180 days of driving; that it has used 4 hours per day (2 hours for the morning run and 2 hours for the afternoon run) as the actual time it takes to drive and take care of the buses each day. This is an hourly rate of \$8.33 per hour, and is considered to be the drivers' regular pay. You also state that drivers may choose to make extra-curricular runs. These vary in length and time ranging from 3-12 hours each. The rate for these runs is set at \$43.50 for each run that is scheduled on a regular school day and \$61.00 for each run that causes a driver to lose an afternoon run. In this case \$16.66 is deducted from regular pay (2 hours x \$8.33) and the 2 hours that would normally be the hours worked for the afternoon run is included in the extra-curricular run time. You wish to know how to pay the bus drivers for overtime hours in compliance with FLSA.

An employee who is covered under FLSA must be paid a minimum wage of at least \$3.35 an hour and overtime pay of not less than one and one-half times his or her regular rate of pay for all hours worked in excess of 40 in a workweek, unless specifically exempt. The "regular rate" of pay under FLSA includes all remuneration for employment paid to, or on behalf of, the employee except payments specifically excluded by section 7(e) of FLSA. In your specific situation, it appears that the drivers are paid an hourly rate (\$8.33) for certain regular driving duties and flat sums (\$43.50 and \$61.00) for performing extra-curricular driving duties. In such cases, the employee's regular rate of

pay is determined by totaling all the compensation received by the driver in the workweek, and dividing by the total hours actually worked. The driver is then entitled to extra half-time pay at this rate for all hours worked in excess of 40 in the workweek.

The example you provided is illustrated below:

	S	M	T	W	T	F	S	Total	Total Pay
Regular Hours	0	4	4	2	4	4	0	18	
Regular Pay		\$33.32	\$33.32	\$16.66	\$33.32	\$33.32			\$149.94
Extra Hours	7			8		6	7	28	
Extra Pay	\$61.00			\$61.00		\$43.50	\$61.70		\$226.50
Grand Totals								46	\$376.44

The \$376.44 represents straight-time pay for the 46 hours worked in the workweek. The driver is owed an additional half-time pay for each of the 6 hours worked over 40 in the workweek. FLSA requires overtime to be paid at one and one-half times the employee's regular rate of pay for all hours worked over 40 in a workweek. In the example, the driver's regular rate of pay is derived from dividing his/her total straight-time pay by total hours worked in the workweek. In this instance \$376.44 divided by 46 equals \$8.16 which is the regular rate. The additional amount due the driver for the 6 overtime hours is computed at 6 times half the regular rate of \$8.16 (6 x \$4.09) which equals \$24.54.

We trust the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator