

**FLSA-213**

March 17, 1977

This is in further reference to your letter of December 2, 1976, concerning the status of preschool teachers under the Fair Labor Standards Act and Regulations, Part 541.3, defining a bona fide professional employee under section 13(a)(1) of the Act.

While preschools engage in basic educational activities for the children attending, preschool employees whose primary duty is to care for the needs of the children would not ordinarily meet the requirements for exemption as teachers.

The professional exemption for teachers under Regulations, Part 541.3, is applicable to an employee whose primary duty consists of the performance of:

- (1) teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed as a teacher in the school system or educational establishment or institution by which he or she is employed; and
- (2) whose work requires the consistent exercise of discretion and judgment in its performance; and
- (3) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and
- (4) who does not devote more than 20% of his or her hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work above described (unless paid on a salary or fee basis of not less than \$250 per week).

We note from the material and information you have provided that of the 13 teaching staff members listed, 4 have completed high school and 2 others apparently are presently attending a school (whether at a secondary or part-secondary level is not indicated).

Work which can be performed by employees with education and training below the college level would not be work of a bona fide professional level within the meaning of Regulations, Part 541.3. Such work, even though basically teaching or instructing, does not require the consistent exercise of discretion and judgment nor would it be predominantly intellectual and varied in character so as to permit exemption as a bona fide professional employee.

Sincerely,

Administrator