

SEP 22 1997

This is in response to your inquiry concerning a letter ruling dated July 11, 1995, issued pursuant to the Fair Labor Standards Act (FLSA) by this office.

You ask whether this ruling would apply to teacher assistants who volunteer as activity coaches for a "nominal" stipend. The assistants would be working in excess of 40 hours per week. The short answer is no.

We think that teacher assistants engaged in coaching of sports or other extracurricular activities after school would be providing the "same type of services" that they are employed to perform. The phrase "same type of services" means similar or identical services.

Teachers (although exempted from the minimum wage and overtime requirements of the FLSA) traditionally engage in extracurricular activities such as coaching athletic teams or acting as moderators or advisers in areas such as drama, forensics, journalism, etc., as part of their jobs. Likewise, when teaching assistants perform such activities, they would be engaging in similar or identical services to those that they are employed to perform.

In contrast, school employees such as bus drivers, custodians, building maintenance, or food service workers are not providing the same type of services when they engage in coaching activity. Their primary jobs involve activities such as driving vehicles, cleaning buildings, repairing equipment or fixtures, or preparing and serving food.

If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team