

**REPORT TO  
THE NATIONAL EDUCATION ASSOCIATION  
ON TRENDS IN FOREIGN TEACHER RECRUITMENT**

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**June 2003**

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# TRENDS IN FOREIGN TEACHER RECRUITMENT

## EXECUTIVE SUMMARY

### Findings

- Public school systems throughout the country are utilizing the services of perhaps as many as 10,000 foreign teachers in primary and secondary schools on “nonimmigrant” work or cultural exchange visas.
- At least to this point, the use of these temporary employees appears to have been largely driven by efforts to address perceived teacher shortages, particularly in specific disciplines such as math, science, foreign languages, and special education, as well as in “less desirable” poor urban and rural school districts.
- The two temporary work visas used to hire foreign teachers are the “H-1B” Specialty Occupation Program and the “J-1” Exchange Visitor Program. The H-1B program is administered by the Department of Labor and the Bureau of Citizenship and Immigration Services (formerly the Immigration and Naturalization Service). The J-1 program is administered by the State Department and BCIS. In both cases, the US consulate or embassy in the prospective employee’s home country makes the final decision whether to grant a visa to the individual. While the H-1B visa is explicitly designed to allow employers to obtain temporary help, the J-1 visa is part of a program that views temporary employment as tangential to its cultural exchange mission.
- Public school authorities – individual schools, districts and state education agencies – are the largest single type of “importer” of foreign educators for public schools. While precise numbers are extremely difficult to obtain, public school systems currently employ an estimated 6,000 to 7,000 teachers under the H-1B program and an additional 3,000 or more under the J-1 program. Many public schools throughout the country have developed extensive H-1B foreign teacher recruitment efforts and twenty-two states and ten school boards have secured official “designation” as J-1 Exchange Visitor Program sponsors.
- A private firm, Visiting International Faculty, is the largest single sponsor of nonimmigrant teachers, having placed approximately 1,800 under the auspices of the J-1 program during the 2002-03 school year.<sup>1</sup> VIF has few direct competitors and none sponsor even a quarter of the number sponsored by VIF. While there are many private firms working in this area, most appear to be small. These companies include traditional employment and temporary agencies, “home country” recruitment firms, web-based service companies, and immigration law firms. Many specialize in providing services to prospective US teachers from specific areas of the world, particularly India, Australia,

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<sup>1</sup> It is beyond the scope of this report to analyze the cultural exchange aspect of VIF’s operations, or that of other designated J-1 sponsors. Nonetheless, it is fair to report that, with a few notable exceptions, the company is viewed as an effective – even unique – organization with high standards for screening applicants, an extensive support system for its teachers, and a programmatic commitment to the goals of the Exchange Visitor Program that goes well beyond lip service.

Canada and the UK for math, science and special education, and Spain and Latin America for Spanish language and ESL teachers. Moreover, few are actually in a position to be a formal J-1 or H-1B sponsor of an applicant.

- Most foreign educators hired through a temporary nonimmigrant visa program become employees of the schools or school districts where they work. While the H-1B program regulations require that nonimmigrant workers be paid the higher of prevailing wages or actual wages earned by similarly situated employees, enforcement of this mandate is notoriously lax. The J-1 program rules are silent on this issue. Nonetheless, it appears that as a general rule these temporary teachers are paid the same as “regular” teachers of comparable experience and qualifications, in accordance with requirements in collective bargaining agreements, school district policies, or state legislation.<sup>2</sup>
- While it does not appear to be widespread, under both visa programs and in certain location, there are teachers working in public schools who are actually employees of a third party. There are a number of H-1B employment agencies that recruit and employ teachers they place in public schools. And several J-1 agencies, including VIF, may be a nonimmigrant teacher’s employer, depending on the firm’s agreement with the school district.
- While nonimmigrant teachers seem generally to be paid the same as their co-workers, some foreign teachers receive lower pay than comparable teachers in their schools. For example, there is at least anecdotal evidence that, absent a collective bargaining agreement or law or policy, some school districts pay their nonimmigrant employees as new teachers, regardless of their experience and qualifications. Also, in at least one egregious situation, a “bodyshop” that was both the sponsor and employer of nonimmigrant teachers illegally withheld significant amounts of teachers’ pay, an action that led to large Labor Department fines and back-pay awards.
- A quite troubling dynamic in both the H-1B and J-1 programs is the inherently temporary and legally precarious status of nonimmigrant teachers. Because their sponsor constructively controls their visa, they are effectively “at will” employees. This is equally the case where the sponsor is also the employer and where the sponsor is not the employer but has the authority to grant eligibility for the visa status. And since either type of sponsor can directly or indirectly cause a teacher’s visa to be revoked, there is at least the potential for a degree of intimidation from which permanent employees are shielded. This is obviously a question of fairness and of an unacceptable balance of power in the employment relationship. Without the protections and due-process rights enjoyed by “regular” teachers, H-1B and J-1 foreign teachers can be subject to a range of abuses and pressures. Moreover, the security of all teachers working in such an environment could be compromised as well.

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<sup>2</sup> Retirement benefits can be another issue, since these employees are explicitly temporary. Indeed, VIF’s financial arrangements with employers clearly anticipate that the company’s fee will be offset by savings on pension contributions. It appears that some non-VIF school districts follow this practice, whether or not they use the savings to pay fees comparable to those charged by VIF.

## **Recommendations**

There are obviously many aspects to the recruitment of temporary foreign teachers in public school systems, some unique to educators and others applicable to the whole phenomenon of temporary nonimmigrant work visas. Moreover, the issues that the NEA will confront in this area range from broad policy questions to practical monitoring and contract enforcement considerations. Below are some initial recommendations for the NEA's consideration.

### **Fundamental Principles Governing the Employment of Nonimmigrant Teachers (and others)**

Any teacher hired to work in a School District should:

- Be an employee of the School District, not of a third-party sponsor or agency;
- Have the same compensation – salary and benefits – as other teachers with comparable experience and skills (only perhaps adjusted to conform with such visa-specific requirements as emergency medical transportation services back to the visa holder's home country);
- Have the same working conditions and protections as other teachers, including full coverage by any collective bargaining agreements that are in force; and,
- Have due-process rights that specifically protect them from the arbitrary revocation of their visas.

### **Recommended State Legislative and Bargaining Initiatives**

Recent legislation in New Jersey (enacted with NJEA's active involvement) and new contract language achieved by the Aurora (Colorado) Education Association are excellent points of departure for other states and NEA Affiliates. While both of these efforts are described later in this report, their main elements are summarized below.

- In March 2002, the New Jersey Legislature adopted "An Act concerning the employment of teachers from foreign countries." Some of its key provisions include:
  - Approval for local boards of education to employ teachers from foreign countries, through an approved agency, in subject areas where the State Board of Education has determined there is a "contemporaneous critical shortage of certified teachers."
  - A requirement that, prior to hiring a teacher from a foreign country to meet a critical shortage, the local school board "shall first make a good faith effort to employ a State certified teacher and shall document its inability to hire an appropriately certified teacher."
  - A mandate that teachers from a foreign country employed pursuant to the Act "shall be deemed to be an employee of the public school district, and as such shall be eligible to become a member of the bargaining unit defined in the applicable agreement with the public school district."

- In its most recent contract with the Aurora Board of Education, the Aurora Education Association was able to obtain extensive language covering foreign teachers. Previously, there was no explicit provision covering such teachers, many of whom were placed by, and remained employees of, VIF. Some of the key provisions of this contract include:
  - A limitation on the board's ability to hire foreign teachers to situations where a critical need exists for which the "pool of candidates (including Teachers in Residence) available domestically is not expected to be large enough to fill the vacancies within the District."
  - A requirement that the board may hire a foreign teacher only after such openings are posted and "no qualified domestic candidates have applications on file with the District at the time the offer of employment is made."
  - A provision stipulating that "Persons who are hired under the auspices of a firm in the business of providing teachers from foreign countries and who teach in the District, will be considered employees of the Aurora Public Schools and will be covered under all provisions of this Master Agreement Application" with the following exceptions:
    - Other than dental coverage, the school district will not be required to provide insurance or benefits (VIF provides medical and other insurance as a mandatory part of its program);
    - The temporary nonimmigrant teachers are not covered by contractual provisions governing teacher transfers, reductions in force, military leave, and elective office leave;
    - Grievances brought on behalf of or directly relating to a temporary nonimmigrant teacher will be moot if the teacher leaves employment with the district (for whatever reason), except that if the AEA "determines that the alleged contract violation impacts U.S. citizens who are in the bargaining unit, the Association shall be free to pursue the grievance."

#### Recommended National Policies for NEA to Advocate

- The Fundamental Principles listed above should be incorporated into the rules governing all forms of temporary nonimmigrant work visas.
- The Labor Department should aggressively investigate employer claims about the prevailing wages they use to justify wage levels for H-1B employees and it should vigorously enforce the prevailing wage, comparable benefits, working conditions and other provisions of existing law.
- Employers should be required to demonstrate an actual shortage of specific available workforce skills before being granted the authority to employ nonimmigrant workers.
- The Labor Department, the BCIS, and the State Department should be required to disclose much more extensive data on nonimmigrant work visa certifications and

authorizations, including details by occupation, location, sponsoring organization (if any) and employer.

- The Exchange Visitor Program should be returned to its original cultural exchange roots; educational institutions that have a demonstrable need to recruit nonimmigrant teachers, researchers or other employees should do so via a reformed formal temporary work visa program.



# ***PART ONE***

## **FOREIGN TEACHER RECRUITMENT**

### **1. Overview: Scope of Inquiry**

The Center for Economic Organizing has been retained by the National Education Association to conduct

“an investigation to determine the companies engaged in supplying foreign and contract educators to public schools districts; the arrangements between the companies and foreign educators, and the companies and school districts where the foreign educators work; and the conditions under which the foreign educators work in U.S. school districts (e.g., are they district or company employees, paid on the salary schedule, members of the collective bargaining unit).”

In the process of investigating the issue of foreign teacher recruitment and writing this report, we have performed an extensive literature search, scoured the Web for data and leads, and delved into a number of Federal databases and statistical analyses. In addition, we have interviewed dozens of people from around the country, including officials at several US departments and agencies, state and local education agency officials, staff at several NEA Affiliates, executives with foreign teacher recruitment and placement firms, and former employees of these firms.

In this report, we analyze the issues relating to foreign teacher recruitment and identify many of the key players, although the number of different actors is sufficiently large and diverse as to defy a comprehensive recitation. Rather, we attempt here to provide a broad overview with representative samples of programs, arrangements, and companies involved in supplying foreign teachers to public school systems. The appendices that follow the main body of this report contain additional detailed data on foreign teacher visa authorizations as well as collective bargaining, regulatory and legislative language.

### **2. The Teacher Shortage and School District Efforts to Combat it with Foreign Teacher Recruitment**

There is widespread agreement that the nation’s public schools will face a serious challenge as they struggle to fill a projected 2 million teacher vacancies over the next decade. While analyses of this challenge – and its most promising solutions – vary markedly, most observers cite as key elements what could be called the New Three-Rs of the looming teacher shortage: Retirement, Retention and Recruitment.

According to most sources, teachers are retiring at an accelerating pace as educators from the “baby boom” generation complete their careers. In Illinois, for example, 25 percent of the teaching corps is over 50 years of age.

Beyond retirement, however, is the challenge of retaining teachers who have recently entered the profession. The NEA’s web site puts the issue succinctly: “The statistics for turnover among new teachers are startling. Some 20 percent of all new hires leave the classroom within three years. In urban districts, the numbers are worse—close to 50 percent of newcomers flee the profession during their first five years of teaching.”

Institutions of higher education that specialize in teacher training are not keeping up with the demand for new teachers, says Betty Castor, president of the National Board for Professional Teaching Standards. While these colleges produce about 150,000 teachers annually, she says, US schools have about 200,000 vacancies a year. The result is that "you start off with a deficit of about 50,000," Castor says.

New teacher recruitment, then, has become a primary focus of education policy makers and administrators throughout the country. Alternative certification, expansion of teacher training programs and foreign teacher recruitment all fit into the broader tapestry of efforts to fill the gap.

A key conclusion of this report is that, at least to this point, the use of temporary foreign teachers appears to have been largely driven by efforts to address perceived teacher shortages, particularly in specific disciplines such as math, science, foreign languages, and special education, as well as in "less desirable" poor urban and rural school districts. Some school districts in major cities like New York City, Chicago, Los Angeles and Atlanta have established their own foreign teacher recruitment bureaus, with significant budgets and expansive global networks.

### **3. "Nonimmigrant" Visa Programs and Foreign Teacher Recruitment**

There are two types of temporary work visas used to hire foreign teachers: the "H-1B" Specialty Occupation Program and the "J-1" Exchange Visitor Program. These are often referred to as "nonimmigrant" visas since they only authorize the holder to work in the US for a specified amount of time. The H-1B program is administered by the Department of Labor and the Bureau of Citizenship and Immigration Services (formerly the Immigration and Naturalization Service). The J-1 program is administered by the State Department and BCIS. In both cases, the US consulate or embassy in the prospective employee's home country makes the final decision whether to grant a visa to the individual. While the H-1B visa is explicitly designed to allow employers to obtain temporary help, the J-1 visa is part of a program that views temporary employment as tangential to its cultural exchange mission.

With the primary temporary work visa program – the H-1B – a school district normally recruits foreign teachers directly, perhaps with the help of an employment agency in the country in which potential recruits live. This visa is for a three-year term and can be renewed once for a total of six years. Individuals apply for this visa in concert with the employer who has obtained authorization from the Labor Department to hire foreign workers. The school district – or an individual school – becomes the employer. While the law governing this type of visa putatively requires that compensation be based on the "prevailing" levels in the locality, in practice there can be wide variation. The ways in which salaries, benefits and working conditions are determined vary by jurisdiction, from state law, to collective bargaining-established standards, to what could be politely termed "local options."

The other important program for K-12 foreign teacher recruitment is the J-1 visa, which is administered through the State Department's Exchange Visitor Program (EVP). The J-1 visa is for an initial one-year term, renewable twice for a total of three years. Under this program, the State Department "designates" EVP sponsors who are then effectively empowered to obtain visas for foreign workers (under quite specific and stringent regulations). According to a list prepared by State in 2001, 70 sponsors have been designated in the teacher category. These include education departments in 22 states, 11 city or county school boards, numerous foundations and specialized schools, and several for-profit companies. Absent a Freedom of Information request, the State Department refuses to release any statistics on this program.

While there is no single source of information on the number of nonimmigrant visas issued for teachers, we have developed estimates based on the best available sources. As can be seen in Table 1, there were about 15,000 K-12 teachers working under nonimmigrant visas in the US during the 2002-2003 school year, 10,000 under the H-1B visa and 5,000 on the J-1 visa. Our best analysis is that approximately two-thirds of these teachers work for public school systems throughout the country, thus indicating that there are about 10,000 foreign teachers in public primary and secondary schools on nonimmigrant work or cultural exchange visas.

**TABLE 1**

Estimated Total Primary and Secondary Teachers From Foreign Countries with H-1B and J-1 Visas (2002-2003 School Year)		
	Estimated Total Teachers	Estimated Public School Teachers*
J-1 Visa Holders	4,875	3,266
H-1B Visa Holders	10,068	6,746
FY 2002 New and Renewals	3,983	2,669
FY 2001 New and Renewals	3,319	2,224
FY 2000 New and Renewals**	2,766	1,853
<b>Combined Total</b>	<b>14,943</b>	<b>10,012</b>
<p>* Assumes that 2/3 of the total J-1 and H-1B visa holders teach in public schools. This is based on an analysis of FY 2002 H-1B Certifications by the Labor Department, where 67% of the positions approved for K-12 teaching positions were for applications from public school authorities. While DOL certifies three slots for every visa actually authorized by the INS (now BCIS), this is the only data available at the sponsor level. It is virtually certain that some approved applications by third-party agencies and uncategorized employers are for teachers in public schools. Because of the difficulty distinguishing charter and private schools by name alone, this analysis does not include charter schools under the "public" category; if they were added to the public school estimate, the total would rise somewhat. For identified public school teachers in the J-1 program, those sponsored by VIF, FACES, Amity Institute, the State of California and the Houston Independent School District alone total more than 2,500.</p> <p>** Estimate based on growth rate between FY 2001 and FY 2001</p> <p>Sources: INS/BCIS, Labor Department, State Department, VIF, FACES, Amity Institute, h1b.info, multiple interviews</p>		

Education-related professions in general have been one of the few that have had continued growth in H-1B visa approvals, with the lion's share going to colleges, universities and professional schools.<sup>3</sup> According to the BCIS/INS, in FY 2000, 12,649 H-1B visas were approved for employment at all forms of educational institutions (over 70% of which were for colleges and

<sup>3</sup> The total number of H-1B visas issued by the INS/BCIS declined by more than 40 percent in FY 2002, from 331,206 in FY 2001 to 197,535 in FY 2002. 257,640 H-1B visas were issued in FY 2000.

universities); in FY 2001, 17,431 visas for educational employment were issued; and, in 2002, 20,613 such visas were approved, with over 80% being issued for colleges, universities, and professional schools<sup>4</sup>. Assuming that these approvals were for three years (either as new or renewed visas), it would appear that there were approximately 50,000 H-1B visa holders in education-related jobs during the 2002-2003 school year, of which about 29 percent were teaching in grades K-12 (about 20% in public K-12 schools).

As can be seen, public school authorities – individual schools, districts and state education agencies – are the largest single type of “importer” of foreign educators for public schools, with an estimated 6,000 to 7,000 teachers under the H-1B program and an additional 3,000 or more under the J-1 program. Many public schools and state education agencies throughout the country have developed extensive H-1B and J-1 foreign teacher recruitment efforts.

A private firm, Visiting International Faculty, is the largest single sponsor of nonimmigrant teachers, having placed approximately 1,800 under the auspices of the J-1 program during the 2002-03 school year. VIF has few direct competitors and none sponsor even a quarter of the number sponsored by VIF. While there are many private firms working in this area, most appear to be small. These companies include traditional employment and temporary agencies, “home country” recruitment firms, web-based service companies, and immigration law firms. Many specialize in providing services to prospective US teachers from specific areas of the world, particularly India, Australia, Canada and the UK for math, science and special education, and Spain and Latin America for Spanish language and ESL teachers. Moreover, few are actually in a position to be a formal J-1 or H-1B sponsor of an applicant.

A search of the Labor Department’s database of H-1B “certifications” for fiscal 2002 reveals that during that year *new and renewed* visas for 7,900 K-12 teaching positions were approved, of which about 5,300 were for public school bodies (see Appendix 2). The state of Texas accounted for the largest number of certifications, by far, with 3,310, followed by California (1,047), Illinois (543), New York (538), Georgia (326), New Jersey (239), Florida (235), Maryland (227), and Ohio (218). As can be seen in Appendix 1, the Houston Independent School District obtained the largest number of authorizations for teaching positions in the country, with 915.<sup>5</sup>

## **THE H-1B NONIMMIGRANT TEMPORARY VISA FOR SPECIALTY WORKERS**

The H-1B is a temporary visa for specialty or technical workers. Typically, the initial term for this “nonimmigrant” visa is three years, renewable for an additional three years.

Congress has enacted a cap on the total number of H-1Bs that can be granted annually, currently 195,000 and scheduled to drop to 65,000 for Fiscal 2004, absent any changes in the legislation.<sup>6</sup>

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<sup>4</sup> The categories reported by the INS have varied over the years. For example, it directly reports “primary and secondary education” only for FY 2001 and 2002; in FY 2000 it reported totals for “colleges and universities,” but for 2001 and 2002, it reports “colleges, universities and professional schools,” making direct comparisons year-over-year more difficult.

<sup>5</sup> As detailed elsewhere in this report, the “certification” of an H-1B position does not automatically translate into the hiring of a foreign teacher. The Labor Department estimates that, in general, it issues three certifications for each visa issued by the BCIS/INS. Our analysis would indicate that for K-12 education, the ratio may be closer to two-to-one.

<sup>6</sup> Although there were 197,000 H-1B visas issued in FY 2002, only 79,000 counted against the cap. This is because a number of different types of H-1B visas are excluded from this count, including renewals, higher education-related visas, and certain other exemptions. Thus, the impact of the reduction of the cap will be

Higher education institutions and related non-profit research institutions are exempt from this cap, and all schools are exempt from a \$1,000 per visa application filing fee.

There is a long-standing controversy over employers' use of various nonimmigrant visas to hire foreign workers. For a number of reasons, this controversy appears to be heating up again. Most immediately, the impending return to the cap of 65,000 annual H-1B visa approvals will almost certainly lead to a push by employer groups to raise the cap again. It is also conceivable that K-12 employers will push to be excluded from the cap entirely, in line with the institutions of higher education. In addition, another type of visa, the L-1, is coming under intense scrutiny and criticism. This type of visa permits foreign-based employers to transfer professional and managerial employees to their US facilities without reference to any cap and with few meaningful restrictions. There are also indications that the J-1 visa program will be coming under pressure from a number of quarters, particularly with respect its "misuse" as an employment tool rather than for its intended cultural exchange mandate.

The Department of Labor, the Bureau of Citizenship and Immigration Services, and the State Department are all involved in the process of issuing H-1B visas.

First, an employer must file a Labor Condition Application (LCA) with the Labor Department. There must be a separate application for each job title, but the application can seek approval for many positions within a specific occupational classification (eg. secondary school math teacher, primary school special education teacher, science teacher, middle school teacher, etc.).

The law requires petitioning employers to certify that they will pay the *higher* of the actual wages paid to similarly qualified workers or the prevailing wage for the occupational class in area (there is clear evidence that this requirement is routinely flouted by many employers, but this issue is beyond the scope of the present inquiry). There are specific regulations for determining actual and prevailing wages for the purposes of an LCA petition, but generally both must be calculated with reference to existing employees performing comparable duties, with similar skills, education and experience.

Where there is a collective bargaining agreement in place, the employer is required to provide notice of the LCA petition to the bargaining representative. Otherwise, the employer is required to post a copy of the petition in a conspicuous location at the worksite.

In the petition, the employer is required to certify, among other things, that:

- It will pay at least the higher of prevailing or actual wages;
- It will provide benefits "on the same basis, and in accordance with the same criteria, as offered to U.S. workers;"
- The employment of H-1B nonimmigrants "will not adversely affect the working conditions of workers similarly employed;"
- The working conditions of H-1B nonimmigrants will be "on the same basis, and in accordance with the same criteria, as offered to similarly employed U.S. workers;" and,
- There is no strike, lockout or work stoppage in progress ☐ in the specified occupation and at the work location – at the time the application is signed and submitted (any subsequent such labor dispute must reported to the DOL and an approved LCA petition cannot be used to obtain a visa for any prospective nonimmigrant worker until the Department determines that the dispute has ceased).

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less dramatic than it first would appear, even though it is still likely to spur employers to attempt to have it increased again.

After the Labor Department has “certified” an LCA petition, the employer must apply to the BCIS for the H-1B visa authorization and the prospective nonimmigrant employee must apply to a U.S. consulate or embassy for the actual visa. While the DOL promises a certification decision within days, the visa application process can take weeks to months (and reportedly is taking much longer than it had previously, in the post-911, post-Homeland Security Department era).

The employer is also required to maintain copies of its H-1B LCA applications and supporting documentation either at the employer’s headquarters or at the work location, and to make them available for public inspection.

According to Dale Ziegler, former Chief of the DOL’s Division of Foreign Labor Certification (which controls the H-1B authorization process at the department), the H-1B LCA certification process is virtually automatic now. “It’s like water through a tap unless there is an obvious error.” The DOL’s LCA application form (called a 9035) can be filed electronically and approved instantly, if the form is filled out correctly and the proper sources for prevailing and actual wages are cited. The DOL wage survey is automatically accepted as is reference to a collective bargaining agreement (“like a hot knife through butter”). Schools sometimes have problems with their applications because they reference “school pay scales” rather than a scale determined by the DOL, by a collective bargaining agreement, or by an independent consulting firm<sup>7</sup>.

There is no requirement that an employer actually demonstrate a critical skills shortage or any other kind of workforce need, other than certifying that any workers hired will be paid the prevailing wage, provided with comparable benefits and working conditions, that regular employees’ working conditions will not be adversely affected, and that there is no current strike, lockout or work stoppage in the specified occupation and location. “We don’t look behind the applications as long as they’ve passed the edit checks,” Ziegler says.

Many employers file multiple applications for LCA certifications and others submit applications well beyond their needs in anticipation of a possible future need. According to Ziegler and others, only about one-third of the total LCA certifications actually result in a visa being issued.<sup>8</sup>

## **THE J-1 EXCHANGE VISITOR PROGRAM VISA FOR K-12 TEACHERS**

The State Department’s “Exchange Visitor Program” is a bedrock of the agency’s cultural exchange efforts, authorizing tens of thousands of short- and long-term visits to the US by students, teachers, researchers and others. It has a special bureau that focuses exclusively on long-term teacher exchanges.

The J-1 visa that the EVP authorizes is for one-year, renewable for up to two additional years. A \$230 processing fee is charged to each applicant. Thereafter, a participant is required to return to his or her home country for a minimum of two years before applying for return to the U.S. This

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<sup>7</sup> For example, a company called the Economic Research Institute (<http://www.eri.com>) was used to establish the “prevailing wage over 10,000 separate employer applications during FY 2001 and 2002.

<sup>8</sup> A perhaps extreme example of employers filing multiple applications and for numbers beyond their current needs can be seen with Educational Testing Service. According to the Labor Department’s H-1B database, between late November 2001 and early March 2002, ETS received approval for 1,900 H-1B visa “essay readers.” According to the DOL database, ETS had previously been denied certification for 1,400 essay readers, in filings from March 2001 through November 2001.

provision is part of the stated “cultural exchange” purpose of the program, although there is a process for applying for a waiver to this regulation. Processing of temporary work visas are reportedly being delayed significantly, due to increased security checks and organizational issues associated with the integration of the former Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Status, into the newly-created Department of Homeland Security.

The State Department designates official EVP/J-1 sponsors and it is these sponsors who actually run the teacher exchange programs. The “designation” is valid for renewable five year terms.

As of October 2001, there were 70 designated J-1 sponsors in the teacher category. These include 22 states, Puerto Rico, and 11 public school districts from throughout the country (see Tables 2 and 3 below). There were nine non-profits, foundations and institutes of various types (Amity Institute, Cordell Hull Foundation, Institute of International Education, Jewish Educational Services of North America), five Montessori schools or federations, thirteen international, bilingual or French schools, Alaska Pacific University, the Archdiocese of Boston, the State Department’s Teacher Exchange Branch, Maharishi University of Management and Phillips Exeter Academy. There were at least two for-profit companies on the list: Foreign Academic & Cultural Exchange Services (FACES; <http://www.facesinc.org>) which operates exclusively in South Carolina, and the Center for International Education (parent of Visiting International Faculty – VIF; <http://www.vifprogram.com>) which operates in eight (soon to be nine) states.

**TABLE 2**

## State Education Agencies Designated by the State Department as Exchange Visitor Program Sponsors\*

Designated Sponsor	Location	Responsible Officer
Alabama Department of Education	Montgomery, AL	Susan Blankenship
California State Department of Education	Sacramento, CA	Edda Caraballo-Browne
Connecticut Department of Education	Hartford, CT	Mary Ann Hansen
Minnesota Department of Children, Families and Learning	Roseville, MN	Mary A. Lillesve
Georgia Department of Education	Atlanta, GA	Elizabeth Webb
Illinois State Board of Education	Chicago, IL	Xavier E. Botana
Indiana Department of Education	Indianapolis, IN	Kristin Hoyt-Oukada
Iowa Department of Education	Des Moines, IA	Carmen P. Sosa
Kentucky Department of Education	Frankfort, KY	Jacqueline Van Houten
Louisiana Department of Education	Baton Rouge, LA	Perry M. Waguespack
Massachusetts Department of Education	Malden, MA	David P. Driscoll
Missouri Department of Elementary and Secondary Education	Jefferson City, MO	John W. Miller
North Carolina Department of Public Instruction	Raleigh, NC	Dr. Henry Johnson
Nebraska Department of Education	Lincoln, NB	Vickie Scow
New Mexico State Department of Education	Santa Fe, NM	Mary J. Habermann
New York State Department of Education	Albany, NY	Judith Golombiski
Pennsylvania Department of Education	Harrisburg, PA	Theona Waxborn
South Carolina Department of Education	Columbia, SC	Leonard McIntyre
Tennessee State Department of Education	Nashville, TN	James E. Swain
Texas Education Agency	Houston, TX	William McKinney
Utah State Department of Education	Salt Lake City, UT	n/a
Washington State Superintendent of Public Instruction	Olympia, WA	Larry M. Strickland

\* as of October 24, 2001;

Source: US State Department, Bureau of Educational and Cultural Affairs

**TABLE 3**

## Public School Districts Designated by the State Department as Exchange Visitor Program Sponsors\*

Designated Sponsor	Location	Responsible Officer
Adams County School District 14	Commerce City, CO	Joe R. Holeman
Brookline Public Schools	Brookline, MA	Robert J. Weintraub
Chicago Public Schools	Chicago, IL	Fernando Martinez
Cicero School District 99	Cicero, IL	Anthony J. Scariano
Denver County School District 1	Denver, CO	Guillermo Duron
East Aurora School District	Aurora, IL	John J. Struck
Jefferson County Public Schools	Golden, CO	Susan Gill
Montgomery County Public Schools	Rockville, MD	Thelma Y. Monk
Needham Public Schools	Needham, MA	Stephen J. Theall
Newton Public Schools	Newtonville, MA	Jeffrey Young
School District of Philadelphia	Philadelphia, PA	Marjorie H. Adler

\* as of October 24, 2001;

Source: US State Department, Bureau of Educational and Cultural

At this writing, the State Department's Bureau of Educational and Cultural Affairs (Office of Exchange Coordination and Designation, Academic/Government Program Designation Division)



has declined to provide statistics on the number of teachers placed by designated J-1 sponsors, indicating that a FOIA submission would be required in order for it to consider such a data request. We were able to gather some data about individual sponsors: During the school year 2002-2003, the two for-profit sponsors, FACES and VIF, sponsored approximately 130 and 1,800 J-1 teachers, respectively. The non-profit Amity Institute says it sponsored about 400 Exchange Teachers for the same period, roughly 60 percent of whom work in public schools. The state of California sponsored between 300 and 345 teachers via the J-1 program and the Houston Independent School District had 43.

An official in another State Department division informally indicated that a new computer system lists a total of 52 sponsors with a list of 4,875 individuals at some stage of the J-1 visa process – including those with current J-1s, those waiting for final approvals and those just coming off their approved visa period. Thus, it would appear that the October 2001 list has been superseded by a much more recent one, but this was not provided.

Several sources have indicated that the State Department sets quotas for the total number of J-1s allotted to an individual sponsor, and that number is considered to be confidential. There are also rumors that the State Department is growing increasingly concerned about the use of the J-1 program as an employment rather than a cultural exchange program. According to one person who has worked with the J-1 program, State is “aware of certain practices” by some sponsors and is “in the process of cracking down.”

According to the State Department web site (<http://exchanges.state.gov/education/jexchanges/about.htm>), some of the basic requirements that a sponsor must ensure include:

*English language proficiency:* “Sponsors are required to ensure that their participants are sufficiently proficient in the English language to participate in their exchange programs before they enter the United States.”

*Insurance:* “Program sponsors are required to ensure that all participants have the appropriate medical insurance” with a highly rated insurance company (eg, AM Best rating of A- or better). This medical insurance coverage must have the following minimum benefit levels:

- Medical benefits of at least \$50,000 per accident or illness
- Repatriation of remains in the amount of \$7,500
- Expenses associated with the medical evacuation of the exchange visitor to his or her home country in the amount of \$10,000
- A deductible not to exceed \$500 per accident or illness.

*Orientation:* Sponsors are required to conduct orientation sessions – seemingly pre- and post-arrival □ with participants that cover the following information:

- Life and customs in the United States
- Local community resources (e.g., public transportation, medical centers, schools, libraries, recreation centers and banks), to the extent possible
- Available health care, emergency assistance, and insurance coverage
- A description of the program in which the exchange visitor is participating
- Rules that the exchange visitors are required to follow under the sponsor's program

- Address of the sponsor and the name and telephone number of the responsible officer
- Address and telephone number of the Office of Exchange Coordination and Designation of the Department of State
- A copy of the Exchange Visitor Program Welcome Brochure.

In addition, sponsors are required to furnish the following pre-arrival information to participants:

- The purpose of the Exchange Visitor Program
- Home-country physical presence requirement
- Travel and entry into the United States
- Fees payable to the sponsor
- Other costs that the exchange visitor will likely incur (e.g., living expenses) while in the United States
- Health care and insurance
- Other information which will assist exchange visitors to prepare for their stay in the United States

*Monitoring of Participants:* “Sponsors are required to monitor their participants' welfare and progress to the extent appropriate for the category, and ensure that their activities are consistent” with the type of employment activity authorized. Sponsors are also required to provide all participants with emergency contact information.

*Annual Report to the State Department:* Sponsors are required to file an annual report with the department that “is comprised of three components, a narrative, certification of compliance with insurance coverage, and a statistical summary” of participants in the sponsor’s program. In addition, the sponsor is required to report various events when they occur, including corporate or financial changes impacting the sponsor, early termination of the participant (for whatever reason), and “any serious problem or controversy which could be expected to bring the Department of State or the sponsor's program into notoriety or disrepute.”

*Teacher Qualifications, Eligibility and Status:* The State Department has a number of requirements that apply to the qualifications, eligibility and status of teachers working under an EVP/J-1 visa:

- First, to be eligible to participate in this program, “foreign nationals must meet the qualifications for teaching in primary or secondary schools in their country of nationality or last legal residence, have a minimum of three years of teaching or related professional experience, and satisfy the standards of the US state in which they will teach. They must also be of good reputation and character, and seeking to enter the United States to teach full time at a primary or secondary accredited educational institution in the United States.”
- Sponsors “are required to evaluate the qualifications of their applicant participants to determine that the above criteria are met and applicant participants are proficient in the English language, and to secure references from colleagues and current or former employers attesting to the applicants' good reputation, character, and teaching skills.”

- Sponsors may only issue a completed visa application authorization form (DS-2019) to selected program participants “who have received a written offer of a teaching position from the accredited institution at which they will teach, and who have accepted the position in writing.”
- Teachers under this program “may teach only at the institution/s and at locations where the institution/s is involved in official school activities (for example, field trips and teacher training programs).”
- The State Department specifies that the “appointment of program participants in a teaching position is temporary, even if the teaching position is permanent.”
- Sponsors are required to ensure that “the position is to be in compliance with any applicable collective bargaining agreement, where one exists.”
- Although the State Department regulations do not specify the level of compensation to be paid (unlike the H-1B program that, in theory at least, requires workers to be paid at the “prevailing wage”), the sponsor is required to provide the participant with a “written statement that clearly states the compensation, if any, to be paid to the exchange visitor teacher and any other financial arrangements relevant to the program.”

#### **4. Recruitment of Foreign Teachers by School Districts and State Agencies**

As previously mentioned 22 state education agencies and eleven local school authorities are designated sponsors under the J-1 program. In addition, hundreds of schools and districts recruit H-1B teachers, directly or through agencies. For example, Chicago, the nation's third-largest school district and the second-largest employer in Illinois, was reported in 2001 to be seeking to hire 3,500 new teachers for 2001-2002 school year. Through a special program called Global Educator Outreach (GEO), the city's school system hired more than 130 teachers from 35 countries, including Japan, India, Colombia, Pakistan, Ghana, Jamaica and Mexico. GEO is described as a “first-of-its-kind partnership between Chicago Public Schools, the U.S. Department of Labor and the INS,” and concentrates on hiring teachers in math, science, world language and bilingual education.

According to a 2001 USA Today report, the Atlanta public school system has 400 to 500 vacancies a year, and recruiters have “scoured the earth for teachers,” says spokesman Seth Coleman. Recruiting trips have taken school officials to Jamaica, South Africa and Canada, according to the paper. Similarly, USA Today reported that Los Angeles Unified School District is “always chasing somewhere around 4,000” teacher vacancies annually, according to Anthonio Garcia, director of recruitment, and that the system hired about two dozen teachers been hired from Spain, Mexico, Canada and the Philippines for the 2001-2002 school year.<sup>9</sup>

The EVP/J-1 program seems to be more heavily used in California than the H-1B program. Indeed, the California Department of Education is the designated “lead sponsor” for the J-1

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<sup>9</sup> California's current budget crisis – and the growing number of teacher layoffs – has reportedly caused school officials in that state to reduce, but not halt, their foreign teacher recruitment. According to several sources, districts are still seeking to fill teacher slots in math, science, bilingual education and special education.

program in that state and has formal “bilateral” agreements with Mexico and Spain, through their respective embassies. The program currently sponsors between 300 and 345 teachers at school districts throughout the state. While the J-1 program is the CDE’s main nonimmigrant teacher recruitment tool, it occasionally helps in other foreign teacher recruitment efforts, usually on a pilot basis. According to a CDE official, it is no longer petitioning for H-1B certifications and instead is focusing on the J-1 program. As the lead J-1 sponsor in the state, other designated sponsors are required to obtain CDE’s permission prior to operating in California. In the past, CDE has granted such permission to VIF and the Amity Institute.

School districts in Texas are, by far, the most active recruiters of nonimmigrant teachers for public schools, at least as reflected in the H-1B certification database. According to Amanda Torres, with the Houston Independent School District’s Human Resources department, HSID recruiters travel to many countries to find teachers. Often, they use the services of recruitment agencies to identify candidates. For the 2002-2003 school year, there are about 530 H-1B teachers and 43 J-1 teachers working for the school district. There may be others who have been authorized by the Labor Department but who have not received their visas yet.<sup>10</sup>

Along with many other employers, HSID uses the Economic Research Institute to help determine prevailing wages.<sup>11</sup> This company is cited as the source of prevailing wage data in over 10,000 individual LCA applications processed by the Labor Department during FY 2001 and FY 2002. ERI, based in Redmond, Washington, provides employers with comparative salary, compensation and cost of living data, based on large, proprietary surveys that it conducts (<http://www.eri.com>).

Another Houston-area school district, the Spring Branch Independent School District, is also active in recruiting foreign teachers, particularly to address what authorities see as a critical need for bilingual teachers. Even with budget cuts, Texas law’s mandate for bilingual/ESL education means that this district must constantly hire qualified new bilingual teachers, as the numbers of students whose primary language is other than English increases. SBISD’s Pam Stout says that her school district, as well as others in Texas, use a number of different tools to recruit teachers, including some direct recruitment. They heavily rely on the Texas Education Agency’s regional Education Service Center to recruit and train bilingual teachers from Mexico through its Alternative Certification program. Stout was surprised to hear that SBISD had obtained authorization from the DOL for 194 new H-1B positions in FY 2002. She said that her understanding is that her district hires approximately 20 nonimmigrant teachers per year.

Kathleen Bowen, of the Texas Education Service Center, Region IV, works to recruit and train teachers for SBISD and other districts in the Houston area. Bowen’s service center is one of the tools used by local school districts to recruit nonimmigrant teachers through the H-1B program. ESC, Region 4 runs an alternative certification program, an aspect of which includes the bilingual/ESL teacher recruitment effort. Region IV works with two Mexican universities at centers in three cities to train and certify teachers. She estimates that her program places about 150 to 160 H-1B teachers from Mexico in various school districts in the region each year (excluding the Houston Independent School District, which runs its own teacher recruitment effort). She says there are other programs to recruit teachers and that hers is solely focused on

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<sup>10</sup> The Labor Department’s H-1B certification database indicates that HSID received authorizations for 915 teachers during FY 2002 and about 1,300 the previous year.

<sup>11</sup> In several conversations with Texas school officials, the author of this report was informed that “there are no teachers’ unions in Texas, just teachers associations.” Assuming there is no collective bargaining agreement in place, an employer must document the basis for its “prevailing wage” determination in its H-1B certification application. This has presumably helped the business of companies like ERI.

alternative certification. There is a similar program run out of Austin to recruit, train and place teachers from Spain. Region IV has been a J-1 sponsor in the past, but is no longer active with that program, since state funding was cut.

Most foreign educators hired through a temporary nonimmigrant visa program become employees of the schools or school districts where they work. While the H-1B program regulations require that nonimmigrant workers be paid the higher of prevailing wages or actual wages earned by similarly situated employees, enforcement of this mandate is notoriously lax. The J-1 program rules are silent on this issue. Nonetheless, it appears that as a general rule these temporary teachers are paid the same as “regular” teachers of comparable experience and qualifications, in accordance with requirements in collective bargaining agreements, school district policies, or state legislation.<sup>12</sup>

Although nonimmigrant teachers seem generally to be paid the same as their co-workers, some foreign teachers receive lower pay than comparable teachers in their schools. For example, there is at least anecdotal evidence that, absent a collective bargaining agreement or law or policy, some school districts pay their nonimmigrant employees as new teachers, regardless of their experience and qualifications. Also, in at least one egregious situation, a “bodyshop” – the Teachers Placement Group – that was both the sponsor and employer of nonimmigrant teachers illegally withheld significant amounts of teachers’ pay, an action that led to large Labor Department fines and back-pay awards (see Part Two, below, for a discussion of foreign teacher compensation issues, including the TPG situation).

A recent presentation by a school official seeking authorization to hire foreign teachers through a third-party agency illustrates what appears to be a common calculation. The Cobb County, Georgia school system’s superintendent provided his school board with a financial analysis of the comparable costs of hiring a teacher through agencies such as VIF or IntelAge, as part of his proposal to negotiate with both companies for up to 20 teachers for the 2003-2004 school year:

*The district will pay the contractor(s) an administrative fee of \$11,500 for each teacher, plus the teacher’s salary on the appropriate District schedule. The administrative fee will be offset by savings in not having to pay employee benefits (TRS, Social Security, health benefits, etc.) See example below:*

<i>Example:</i>	<u>CCSD</u>	<u>International</u>
<i>Contractor Administrative Costs</i>	<i>N/A</i>	<i>\$11,500</i>
<i>Beginning Teacher Salary</i>	<i>\$34,542</i>	<i>34,542</i>
<i>Fringe Benefits (30.45%)</i>	<i>10,518</i>	<i>N/A</i>
<i>Signing Bonus</i>	<i>1,000</i>	<i>N/A</i>
<i>TOTAL COST/TEACHER</i>	<u><i>\$46,060</i></u>	<u><i>\$46,042</i></u>
<i>Savings/Teacher \$ 18</i>		

<sup>12</sup> Retirement benefits can be another issue, since these employees are explicitly temporary. Indeed, VIF’s financial arrangements with employers clearly anticipate that the company’s fee will be offset by savings on pension contributions. It appears that some non-VIF school districts follow this practice, whether or not they use the savings to pay fees comparable to those charged by VIF.

*This example is for a new teacher – the most conservative scenario. More experienced teachers have higher salaries and correspondingly higher benefits costs, which the District will avoid for International teachers<sup>13</sup>.*

While it does not appear to be widespread, under both visa programs and in certain areas of the country, there are teachers working in public schools who are actually employees of a third party. There are a number of H-1B employment agencies that recruit and employ teachers they place in public schools. And several J-1 agencies, including VIF, may be a nonimmigrant teacher's employer, depending on the firm's agreement with the school district.

The more prevalent types of third-parties involved in the nonimmigrant teacher business, however, are recruitment and placement agencies who are neither sponsors or employers. A Google search using the terms "H-1B" and "teacher" produces uncounted pages of hits from companies throughout the world. These firms range from traditional employment and temporary agencies to on-line-only services to law firms. Many specialize in providing services to prospective US teachers from specific areas of the world (particularly India, Australia, Canada and the UK for math, science and special education, and Spain and Latin America for Spanish language and ESL teachers).

While some of these firms are paid by prospective employers, most seem to charge the job hunter. Fees generally range from a few hundred dollars to many thousands of dollars, in addition to BCIS processing fees. Some H-1B service companies sell "do-it-yourself" kits for \$40 or \$50. In addition, many employment-agency type companies charge a percentage of the successful candidate's first year salary, ranging from 7% to 15% or more. Attorney-based services typically charge a flat fee, with volume discounts to employers seeking approval of multiple H-1B visa petitions.

Both employment-agency and attorney based services sometimes offer paid access to databases of employers purportedly seeking foreign workers (a "match" made by a client usually requires that additional services be acquired and fees paid). For example, the H1 Visa Job Corporation ([www.h1visajob.com](http://www.h1visajob.com)) advertises that job seekers utilizing its resume submission service will have their resumes submitted to thousands of employers who are actively seeking foreign workers, including 188 in "training/education."

A quite troubling dynamic in both the H-1B and J-1 programs is the inherently temporary and legally precarious status of nonimmigrant teachers. Because their sponsor constructively controls their visa, they are effectively "at will" employees. This is equally the case where the sponsor is also the employer and where the sponsor is not the employer but has the authority to grant eligibility for the visa status. And since either type of sponsor can directly or indirectly cause a teacher's visa to be revoked, there is at least the potential for a degree of intimidation from which permanent employees are shielded. This is obviously a question of fairness and of an unacceptable balance of power in the employment relationship. Without the protections and due-process rights enjoyed by "regular" teachers, H-1B and J-1 foreign teachers can be subject to a range of abuses and pressures. Moreover, the security of all teachers working in such an environment could be compromised as well.

In a telephone conversation, the State Department's Stanley Colvin<sup>14</sup> was asked about a provision in a 2000 contract among the San Jose Unified School District, VIF, and VIF-sponsored

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<sup>13</sup> The school board approved entering into negotiations with VIF and IntelAge, with one dissenting vote.

nonimmigrant teachers. This provision states that VIF has the right to “terminate Teacher’s Visa at any time for any or no reason and without notice.”<sup>15</sup> Colvin, whose office oversees educational J-1 visas, replied: “No one can tell us that they have a right to terminate a J-1 visa holder that they are sponsoring without cause. It’s probably an unenforceable clause. As far as we are concerned, a sponsor can terminate a J-1 visa holder for good cause only.” An examination of the State Department regulations governing sponsor termination of Exchange Visitor Program J-1 visa holders would appear to leave room for argument, or “our interpretation, which is what counts” as Colvin put it.<sup>16</sup>

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<sup>14</sup> Acting Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs

<sup>15</sup> This contract is discussed extensively in Section 2, below, and in Appendix 5.

<sup>16</sup> See Appendix 6 for the text of the State Department regulations.

## ***PART TWO***

### **SELECTED THIRD-PARTY TEACHER RECRUITMENT, PLACEMENT AND EMPLOYMENT AGENCIES**

**This section of our report on trends in foreign teacher recruitment provides information on a dozen firms – including one non-profit organization – that are involved in the “industry.” As might be expected, the amount and quality of information available on these companies varies widely.**

#### **1. Visiting International Faculty (VIF)<sup>17</sup>**

##### An Overview of VIF

Visiting International Faculty (VIF) is the “dba” (doing business as) name of the Center for International Education, Inc. CIE’s registered agent is David B. Young, and was originally formed in 1987 as International Education Services, Inc. of Chapel Hill. It was founded by his brother Alan J. Young. At the time, their father was president of Elon College (now university). Alan and David Young are now Co-Executive Directors of VIF. Their sister, Jane, is VIF’s manager of teacher selection.

Alan Young is the registered agent for several other companies, including Chapel Hill Leasing (formerly VIF Transport Company and formed in 1998), VIF Select, Inc. (formed in 2002), VIF Tico, Inc. (formed in 2002), and VIF UK, Inc. (formerly Happy Hippo, Inc. and formed in 1997).<sup>18</sup>

VIF initially operated on a fairly small scale in North Carolina alone, recruiting its initial group of 12 teachers from France and Spain in 1988 in association with a statewide foreign-language initiative. VIF grew steadily, if modestly, until 1995, when the State Department designated the company as an Exchange Visitor Program sponsor, giving it the authority to issue J-1 visas. This designation<sup>19</sup>, which is valid for renewable five-year terms, permits VIF to sponsor foreign teachers for employment using J-1 nonimmigrant visas, for three renewable one-year terms.

The company is now in eight states, having sponsored about 1,800 teachers during the 2002-2003 school year (see Table 4 on the next page for details). It is expanding into Florida for the 2003-2004 school year. There appears to be no formal cap on the number of teachers that VIF may sponsor, other than its ability to place teachers with schools and school districts, although some

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<sup>17</sup> It is beyond the scope of this report to analyze the cultural exchange aspect of VIF’s operations, or that of other designated J-1 sponsors. Nonetheless, it is fair to report that, with a few notable exceptions, the company is viewed as an effective – even unique – organization with high standards for screening applicants, an extensive support system for its teachers, and a programmatic commitment to the goals of the Exchange Visitor Program that goes well beyond lip service.

<sup>18</sup> We have not been able to identify the purpose of these corporations, other than Chapel Hill Leasing and, perhaps obviously, VIF UK, Inc. Chapel Hill Leasing’s web site, <http://www.chleasing.com>, says that VIF “has partnered with Chapel Hill Leasing, Inc. to ensure that all VIF teachers will have reliable transportation from the beginning of their placement in their new school district and community throughout their participation in the VIF Program.” VIF UK is probably used for the company’s initiative in the United Kingdom, although its “Happy Hippo, Inc.” origin remains obscure.

<sup>19</sup> As of September 2000, VIF’s Exchange Visitor Program designation was P-3-5633.



sources have said that the State Department establishes confidential caps for its designated J-1 sponsors.

VIF has expanded its program into the UK, with a reported 60 US teachers being placed with several local education authorities in that country for the 2002-2003 school year. It appears to rely on an education consulting firm called “Four S” to help it place its teachers there (<http://www.fours.co.uk>). According to VIF’s web site, David Young is currently living in the UK, helping coordinate the program. His wife is also teaching in a VIF/UK school.

VIF seems to use a number of organizations in the countries in which it recruits. For example, an Australian firm, Teachers Recruitment International (<http://www.triaust.com/contents.htm>) says it is working with VIF to place teachers from that country and New Zealand in a number of states in the US. Also, VIF uses the Checkpoint Charlie Foundation in Germany, which is also used by some public school districts, particularly in Texas (see <http://www.cc-stiftung.de/eng/> and [www.lehrer-nach-amerika.de/eng/main/information.htm](http://www.lehrer-nach-amerika.de/eng/main/information.htm)).

On its web site, VIF is now advertising that there is a separate contact for “VIF Canada,” indicating perhaps that the company is placing more emphasis on recruiting teachers from our northern neighbor.

According to Dun & Bradstreet, CIE/VIF has about 100 employees and annual revenues around \$10 million. However, assuming that VIF receives the stated \$11,000 to \$11,500 per placement, its roughly 1,800 teachers would produce about \$20 million in gross annual fees. This estimate does not count any additional funding it receives to pay salaries for teachers who are VIF rather than school district employees.

VIF enjoys a special status in North Carolina, with an estimated \$31 million specifically earmarked by the state legislature for use by school districts on VIF programs. The company is currently the only organization for which schools can elect to “convert” authorized teaching positions into funding authority to pay for the company’s teachers and fees (see below for a more detailed explanation).

**TABLE 4**

Reported VIF Placements for School Year 2002-2003			
State	Locations	VIF Teachers	Comment
California	San Jose	42	San Jose Unified School District
Colorado	2 Identified	85	Aurora (44), Eagle/Vail, Englewood (?)
Georgia	Multiple	362	Counties include Fulton, Clayton, Paulding, Gwinnett, Walton, others
Kansas	Overland Park	6	Blue Valley School District
North Carolina	79 School Districts	899	Charlotte-Mecklenburg, Chapel Hill-Carrboro, Wake County (68), Cape Fear area (~150), other locations
New Jersey	Multiple	138	Bridgeton, Patterson County (13), Vineland, Hoboken, other locations
South Carolina	Multiple	109	Berkeley County, Charleston County (28 for '01-'02), Johnston County, others
Virginia	35 School divisions	136	Loudon (25+), Newport News (22+), Goochland, Rockbridge, other locations
UK	Multiple	60	US teachers in UK schools; Surrey, East Essex, other locations
<b>Reported Total</b>		<b>1,800+</b>	
NOTE: VIF is expanding into Florida and is recruiting an unspecified number of teachers for the 2003-2004 school year			
Sources: Visiting International Faculty web site; newspaper articles; web searches			

VIF's \$11,000-\$11,500 fee covers a range of direct expenditures on its teachers, including annual roundtrip travel from the teacher's home country, as well as health, life, disability, emergency medical transport and other insurance. The fee also funds VIF's recruitment, training, monitoring and support activities. Presumably, VIF hopes that its fees will help it generate a profit as well.

In a telephone conversation, Ned Glascock, VIF's Communications Manager, expounded at length about VIF's cultural mission. "We are not an employment agency, we are a cultural exchange organization," he said. Following State Department regulations, he said, VIF provides orientation and training for new teachers both in their home countries and in the US. VIF teachers are provided with a support network and a "hot line" to call if they have any problems. They also have medical and prescription benefits. Glascock said that VIF teachers "are paid comparably to US teachers and get comparable benefits."

Declining to be more specific, Glascock said that the employment relationship of VIF teachers "varies by state and by district." Depending on the circumstances, a VIF teacher may be a local school district employee or a VIF employee.

Asked about competitors, Glascock prefaced his answer by saying that he doesn't feel the company has any real competition. "Other organizations just don't provide the support to their teachers that we do. We're really unique that way," he argued. Responding to the question about competitors, Glascock named South Carolina's FACES, several "placement-only" organizations operating under the Fulbright program, and school districts in such cities as New York, Chicago and Houston that have developed their own foreign teacher recruitment programs.

At the end of the telephone conversation, Glascock suggested that any additional questions be posed to him in writing. He was sent a number of questions via e-mail, but Glascock took exception to them and indicated that VIF would only respond to questions posed directly by NEA's leadership. In a subsequent conversation between Mary Donny, VIF's government relations manager, and an NEA staff member, Donny answered some of the questions.

She said that VIF provides Blue Cross/Blue Shield medical coverage for its teachers, and that the teachers are happy with it. Donny confirmed that VIF teachers are required to take out an automatic relocation loan to cover often unexpected expenses such as deposit on rentals. It's a no interest loan, repaid on monthly basis, according to Donney, and VIF teachers are happy to have these loans available. They can put the money in a bank and earn interest on it if they don't need it. VIF does discourage purchase of autos with the loan, since cars lose value as soon as they're driven off lot. But it doesn't control how teachers spend the money.

When asked whether VIF teachers are required to utilize the services of the VIF Transport Company, Inc. and the VIF Transport Automobile Insurance companies for automobile leases (or purchases) and automobile insurance, Donny replied that teachers are no longer required to use VIF's automobile leasing company, now called Chapel Hill Leasing.

## VIF in North Carolina

As noted above, VIF has a special relationship with the state of North Carolina. In a telephone conversation, Fran Hoch, section chief in charge of curriculum for the North Carolina Department of Public Instruction (DPI) discussed VIF at some length. She said that she has dealt with VIF since its inception. Her job vis-à-vis VIF is to verify the qualifications of VIF-procured teachers.

Hoch observed that VIF started as a cultural exchange company, helping school districts find elementary school foreign language teachers. It has grown to the point that it now provides some 900 teachers to K-12 schools in many different subject areas, particularly in locations where it is difficult to recruit sufficient teachers (i.e. poor rural and urban school districts).

Hoch said that while she believes that VIF is sincere in presenting itself as primarily a cultural exchange organization, many school districts look to it to fill serious hiring shortfalls. She thinks that demand for VIF's services would probably decline if the teacher shortage were alleviated, but that many school districts do believe in VIF's stated multicultural exchange mission and would continue to work with the company, if perhaps with lower numbers of VIF teachers.

Schools pay for VIF teachers in a number of ways, Hoch reported, but primarily through a special provision in the state budget that permits school districts to convert teaching positions to dollars to fund VIF positions. Some districts are able to tap other sources for VIF teachers (ESL, exceptional children monies), but most use the conversion formula.

For the 2002-2003 school year, the conversion amount was \$43,682 (the average teacher compensation in the state, including benefits, less 3%). School districts use this money to pay VIF's \$11,000 to \$11,500 fee, plus teacher wages. Schools are not required to make any retirement system payments for VIF teachers and J-1 cultural exchange visa holders are exempt from paying FICA taxes for the first 18 months of their employment (this saves money both for the employee and the employer). In addition, VIF teachers are covered by the company's health plan.

Teachers are employees of the school district, but their wages are not uniformly set, according to Hoch. Rather, the school district, VIF and the employee negotiate the salary level in what Hoch called a "negotiated dual relationship." She noted that while the school district is the employer, VIF controls the visa. Generally, she said, VIF teachers are paid at comparable levels as regular employees of the school districts, taking into consideration their experience and qualifications. According to Hoch, most VIF teachers have 3 to 6 years experience and many have advanced degrees or specialized certifications. She acknowledged that VIF teachers could end up making less than similarly situated employees of the school districts, but argued that VIF has "been careful that their teachers can live well."

Currently, VIF is the only company for which this conversion methodology may be used, but Hoch said that her agency is working to permit school districts to retain other companies using the conversions.

In response to questions about the possibility that VIF has expanded too quickly, she agreed that the company has experienced growing pains and is probably more bureaucratic and less flexible than it was in the past. However, she says she believes that VIF teachers are still getting their needs met by the company and says that VIF is aware of the risks of too much growth.

Angela Farthing is the Manager of NCAE's Center for Teaching and Learning and has probably had more direct contact with VIF than any other NEA-affiliate staff person in the country. Farthing views VIF as an effective cultural exchange organization. She did some research into VIF in response to an NCAE New Business Item last year<sup>20</sup> and found it to be "a great program." She says that VIF has been particularly useful in low wealth rural and urban school districts. She also believes that VIF teachers are paid comparably to regular teachers, when experience and qualifications are taken into account. Here is an excerpt from Farthing's report:

"VIF teachers must first pass the Praxis tests in their subject area before applying for a job in the USA. There are other benchmarks that these teachers must meet prior to being hired by the Dept. of State. They are not hired through the US Department of Education. NC DPI does a background check once the credentials are validated. The average VIF has 6 years of teaching experience and over 30 have been recognized in their current LEA for being outstanding. Currently there are 890 VIFs in NC, working in 67 LEAs; 99 of these teachers are working in 48 of the 81 low-wealth districts. Half of these educators work in elementary schools, 21% teach math or science and the others exceptional children. This program is similar to the Fulbright Scholarship program except there are no federal funds to support the VIF program. Many of the VIF's are veteran teachers in their homeland. The VIF program is associated with Higher Education Institutions in various areas of the state."

Farthing says that some NCAE members are upset about VIF for a number of reasons, including the fact that some districts pay VIF teachers for experience and skills, leading them to be paid more than new regular teachers. Responding to concerns expressed about VIF's requirement in North Carolina that arriving teachers use a designated bank and purchase auto insurance through a VIF-selected broker, Farthing says: "The reason VIF teachers are required to bank with a certain bank when they arrive is that without Social Security numbers, banks do not open accounts. This one bank will open accounts until you are settled □ then you can move the funds wherever. Not all countries require car insurance, but the USA does, so VIF helps by having a company to assist VIFs" get coverage.

She believes much of the upset that members feel stems from a lack of understanding of the program. Farthing notes that about 75 VIF teachers (out of about 800) have joined the NCAE.

While generally supportive of VIF, she says she broadly agrees that the company has become more bureaucratic over the years. "It's a good program, but I'm concerned with problems that it has supporting its teachers," she says.

### VIF in San Jose

VIF placed 42 teachers in the San Jose Unified School District (SJUSD) for the 2002-2003 school year. According to Gerie Bledsoe, Uniserv Director, San Jose Teachers Association, VIF teachers are members of the bargaining unit and covered by the contract. They are paid wages based on the SJTA's contract, although they do not receive pension benefits and their health plan is sponsored by VIF. Bledsoe noted that it doesn't seem to him that these teachers get a lot of support from VIF.

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<sup>20</sup> "34. The 2002 NCAE Representative Assembly directs the BOD and the NCAE staff to undertake a study of the Visiting International Faculty program in our state and to send this information to the locals."

John Shannon is manager, Human Resources/Employee Services for the San Jose Unified School District. He was interviewed several times, communicated with Gerie Bledsoe via e-mail, and provided a copy of a September 2000 contract with VIF.

According to Shannon, the school district hires foreign teachers via a number of different avenues, including hiring them directly through the H-1B specialty worker visa program and utilizing the services of VIF, the California Department of Education (which runs its own elaborate J-1 visa teacher recruitment program), the Amity Institute (another designated J-1 sponsor). Although a database extracted from the Department of Labor's H-1B visa records indicates that during fiscal year 2002 (ending September 2002), the SJUSD received approval to hire 156 foreign teachers, Shannon says that he would be surprised if there were more than a dozen H-1B teachers in the school system. He says that beyond the 42 VIF teachers the system currently employs, it has hired 16 hired through the Amity Institute (primarily from the Philippines and South America) and 28 teachers from Mexico and Spain through the California Department of Education's own J-1 program.

Shannon says that the SJUSD started working with VIF in the 2000-2001 school. He believes that the district will have slightly fewer than the current 42 VIF teachers for the coming school year, not replacing all of the ten teachers who are completing their three-year stints. Also, he thinks that his district is the only one in California that works with VIF, although he has heard that they have approached other districts.

Shannon says he is generally satisfied with VIF's performance and believes the company performs a useful service both as a cultural exchange organization and as a teacher recruitment agency. "It can be quite difficult to find enough credentialed teachers, particularly in such areas as special and bilingual education. VIF does a credible job of screening applicants and we've been happy with the people they've sent us."

In response to questions, Shannon says he has not heard of any particular problems with VIF's health plan as compared to the one offered the SJUSD's regular employees. Neither has he received any feedback regarding the lack of support by VIF of its teachers or other difficulties specific to VIF teachers. Shannon says that VIF has hired a retired San Jose teacher to support its program there, and he believes this arrangement is working well.

Regarding the 2000 VIF contract that Shannon provided, he says that the current contract is basically unchanged, except for the stipulations that VIF teachers lease an automobile from a VIF affiliate (and obtain automobile insurance from another VIF affiliate). He believes the 2000 contract was designed for North Carolina, where VIF is headquartered and where it has a much larger number of teachers. He attributes the change to the impracticability of applying it on the West Coast.

Shannon says that his district is regularly approached by other companies and organizations that want to help recruit foreign teachers. He cites companies that have special connections in the Philippines and in India, as examples. To date, he has declined to work with these other companies, but says he's keeping an open mind.

The main concern Shannon identified with respect to VIF revolves around the desire of some VIF teachers and their employers to extend the teachers' employment beyond the three-year Exchange Visitor Program limit. Since this State Department program is designed as a cultural exchange, there are specific requirements that EVP visa holders return to their home country for a minimum of two years before returning to the US for any other employment. There are, however, ways in

which this requirement can be circumvented. These include applications for “green cards” for the employees, for H-1B nonimmigrant visas, and for waivers to the J-1 program requirements.

While the State Department accepts that there may be occasional situations that warrant exceptions, its position is that any sponsor whose program participants regularly extend their stay in any significant numbers risks losing its official designation as a J-1 sponsor. In a letter to participating school districts, VIF says that it has been “informed by the State Department verbally that retention for continuous periods beyond the three-year exchange program ought to occur for no more than one percent to three percent of participants.” VIF goes on to warn that it “may be required to discontinue collaboration” with offending districts.

### VIF in Colorado

During the 2002-2003 school year, VIF had 85 teachers in two Colorado school districts; Aurora, in suburban Denver, and Eagle County, in the central Colorado mountains. According to Jeanne Beyer of the Colorado Education Association, until 2002, VIF teachers in both districts were direct VIF employees and were not covered by a collective bargaining agreement. Beyer says that the “Aurora EA bargained these teachers into their master agreement last year.”<sup>21</sup> There is no master agreement in Eagle County and VIF teachers continue to be employees of VIF, not the school district. The Aurora VIF teachers are now school district employees, covered by all but a few specific provisions of the collective bargaining agreement, and can be members of the AEA. In Eagle County, which has a rapidly growing Spanish-speaking school age population, VIF teachers are employees of the company. The Eagle County Education Association, according to Beyer, “is basically shut out” of any discussions regarding these teachers’ wages, benefits and working conditions.

### VIF in New Jersey

In New Jersey, VIF had 138 teachers in a number of school districts throughout the state. A confluence of issues – some directly involving VIF and others involving another teacher recruitment firm (the Teachers Placement Group, see below) – led to the enactment of a law last year specifically addressing the circumstances under which foreign teachers may be employed by public schools in the state. The New Jersey Education Association played a key role in the enactment of the legislation, which regulates the use of teachers from foreign countries in New Jersey public schools. The law was the result of extensive discussions among NJEA, the state Department of Education, the New Jersey Principals and Supervisors Association, VIF, and members of the state Assembly and Senate.<sup>22</sup>

According to NJEA’s statement in support of the legislation, the proposed law “has the potential to resolve all of the issues [involving foreign teachers] and to limit the recruitment and employment of teachers from foreign countries by school districts. Furthermore, it requires that the State Board of Education must first declare that there is a shortage of certified teachers in a particular field before local districts may hire a teacher from a foreign country. It also mandates that teachers from foreign countries meet the same requirements for certification to teach in New Jersey that United State citizens must meet. Finally, any teacher from a foreign country

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<sup>21</sup> See Part Three of this report for a more extensive discussion of the AEA contract provision covering VIF employees, and see Appendix 3 for the full text of the contract’s language.

<sup>22</sup> See Part Three of this report for a more extensive discussion of the New Jersey foreign teacher legislation, and see Appendix 4 for the full text of the law.

employed pursuant to this act shall be deemed a member of the bargaining unit defined in the applicable agreement with the public school district and shall be represented by the same representative organization as the employees covered by that agreement.”

The legislation also specifies that a board of education may only employ a teacher from a foreign country “who is enrolled with an approved international agency which operates a teacher placement program” (i.e. an agency such as VIF).

### VIF in Kansas

VIF had six teachers placed in the Blue Valley, Kansas school system during the 2002-2003 school year. Sherrelyn Smith, president of the Blue Valley NEA affiliate, reports that her school district has had international teachers for five years. These teachers are recruited through VIF, but are employees of the district. “The foreign teachers are on a regular teacher’s contract subject to the same pay, benefits, policies, etc.,” she says. They have the same pay and benefits as other teachers in the district. These teachers are covered by the collective bargaining agreement. She believes that VIF is paid \$11,000 per teacher. The teachers have been recruited from Spain and Latin America.

### A Former VIF Teacher is Critical

“Cheryl” is a former VIF teacher and current regular teacher in a state in which VIF operates. She agreed to discuss her experiences with VIF on the condition that neither she nor the school at which she now works be identified. She came to the US on the VIF program a number of years ago and is now working to become a US citizen. Cheryl currently works at a school which has other VIF teachers.

Cheryl said that her experience as a VIF teacher was a good one. She feels that the company, which was much smaller then, did a good job of recruiting, placing and supporting their teachers. Everyone was on a first name basis and any problems that arose were quickly resolved. Now, however, she thinks that VIF “has become just a big business,” more focused on generating fees than fulfilling its original mission. She complains that teachers are required to lease automobiles from VIF’s leasing affiliate (although, as noted above, VIF’s Mary Donney says that this is not the case). She also says that some VIF teachers she knows have not been provided with transportation back to their home countries for the summer, in spite of previous VIF commitments.

Cheryl said she respects VIF’s local advisors, but that they are not able to advocate for their VIF teachers, both because of the company’s growing bureaucracy and because these individuals’ visas are also in VIF’s hands.

Cheryl said that compensation practices for VIF teachers in her state varies among school districts, with “some very fair and very nice while others view them as a cheap resource that they can always replace.” She says that some teachers with significant experience are paid as probational teachers, with annual salaries of around \$25,000. She also cites teachers with doctorates who are not being paid according to their experience and qualifications.

Finally, Cheryl believes that VIF has become quite powerful in the state, donating money to politicians and hiring retired state education department personnel.

## **2. Foreign Academic & Cultural Exchange Services, Inc. (FACES)**

Foreign Academic & Cultural Exchange Services, Inc. is a designated J-1 teacher visa sponsor. It is a private, for-profit company based in South Carolina. FACES only operates in South Carolina and sponsored 128 teachers during the 2002-2003 school year. The company is owned by Jeanne Y. Palyok-Keen, a former long-time teacher, and her son. Before launching FACES, she was a mentor for VIF teachers in the state.

She says her program is “roughly the same” as VIF and has some overlap in South Carolina school districts. Regarding VIF, she says “I don’t consider them to be competitors, really, but they consider us to be competitors.” When asked whether she has the impression that VIF has grown too large, she replied: “Knowing the difficulties operating a program in just one state, I don’t know how they can adequately supervise all those teachers in seven or eight states. It does seem to me that they’ve grown too big and probably have some problems that stem from their expansion out of their home state.”

## **3. Amity Institute**

The Amity Institute is a non-profit organization, formed in 1962, and headquartered in San Diego, California. Amity runs a number of cultural and educational exchange programs, including its sponsorship of J-1 visa Exchange Teachers (ETs). According to Amity program coordinator Tiffany Bettencourt, the institute sponsored about 400 ETs for the 2002-2003 school year, of whom roughly 60% were placed in public schools. She says that Amity’s ETs came from 37 countries and were placed in school districts throughout the country. In addition, Amity placed approximately 200 foreign volunteer “assistant teachers.” Also called “interns,” these individuals volunteer part-time at schools, providing cultural and language exposure to students, Amity says.

As described by Bettencourt (as well on Amity’s web site, [www.amity.org](http://www.amity.org)), there are some clear differences between the institute’s J-1 program and that of VIF. “We’re a liaison,” she says. “We’re very centralized, and are located in San Diego. We get the schools to do many of the things that VIF does.”

Amity does identify and screen prospective teachers in their home countries. Once the teacher has been vetted by Amity, an interview (by phone or in person) is arranged with the “Host School.” Assuming that the interview goes well, the applicant may be offered employment, “contingent upon receiving visa and obtaining US credentials.”

Amity charges a fee that, for teachers employed by public schools, is generally paid by the teacher.<sup>23</sup> Bettencourt says that since private school teachers’ salaries are lower, their schools generally pay Amity’s fee. The institute’s \$3,000 fee is much lower than VIF’s standard \$11,000-\$11,500 fee, but it also covers much less. Payable in three increments once a teacher starts working, it is designed to cover only Amity’s administrative and support costs. It does *not*

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<sup>23</sup> For example, on its web site, Amity advertises two teaching positions at L’Etoile du Nord, a French immersion school in Saint Paul Public Schools: “These positions offer health benefits and salary. The Exchange teacher will be expected to pay the Amity Administrative fee.” At the Académie Lafayette, a public school in Kansas City, Missouri with three openings, Amity says that the prospective employer “will negotiate Amity Institute administrative fee with potential teacher applicants.”



include health and other insurance or transportation to and from the teacher's home country. Rather, teachers are expected fund their own travel costs and to make their own arrangements for the insurance that is required as a condition for the issuance of a J-1 visa (health, emergency medical evacuation services, etc.). Amity offers its teachers the option of purchasing health insurance, but Bettencourt says most teachers who are assigned to public schools end up being covered by their health plans.

She says that the teacher negotiates compensation (salary and benefits) directly with the school that is considering offering him or her a position. She said that it is "important to us that teachers get paid comparably to other teachers in their schools," but it does not appear that Amity plays a direct role in establishing a teacher's compensation.

When asked, Bettencourt acknowledged that Amity could be less expensive to a school district than VIF, and almost certainly in districts with collective bargaining agreements – or laws <sup>24</sup> that govern the salaries that J-1 teachers will be paid. VIF's fee is paid by the school district<sup>24</sup> and covers its administrative costs, various types of insurance, transportation, and presumably a profit. On the other hand, the teacher generally pays Amity's fee *and* transportation *and* at least some insurance that is unlikely to be covered by a school district's plan. Even assuming that the school district also picks up the health insurance, it seems obvious that the Amity program would be thousands of dollars less expensive than the one sponsored by VIF.

Bettencourt says Amity and VIF both have teachers in San Jose, California as well as in certain schools in New Jersey.

Asked about the impact on Amity's program of school budget cuts and teacher layoffs, Bettencourt said that the institute has felt a modest impact. "We have about 100 who are exiting after completing their terms and about 70 coming in," she says. She also noted that Amity also works to help teachers transfer into other school districts, citing as an example impending meetings with human resources officials from the Brooklyn (NY) school system to work out a transfer of one or more teachers currently working in Oakland. Asked about the specific impact of the particularly heavy teacher layoffs in Los Angeles, Bettencourt replied, "they're all fine in LA. They all work in special education and are not effected."

#### **4. Teachers Placement Group**

The most notorious H-1B teacher recruitment agency is a firm called the Teachers Placement Group, based in Plainview, New York, which recruited at least 100 educators from India in 2001.

On its web site, TGP told prospective US employers that they wouldn't need to incur costs normally associated with recruiting teachers from abroad: "No transportation or relocation expenses need be borne by the schools as the teachers are willing to bear their own costs to come to this country due to the higher salaries in this country versus in their own country." In addition, TGP offered other savings for an employer using the firm's services: "No Pension Fund contribution needs to be made by the school as they are here for a fixed period or are not a direct employee of the school."

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<sup>24</sup> It would appear that VIF is at least partially changing this policy. On its web site, it notes: "At this time, there are no fees required [to be paid by teachers] for participation in states other than Florida." No additional information is provided about the nature of the fees to be paid by teachers at its Florida locations. Nor is there any elaboration on its "at this time" qualifier.

Based on information on its web site, which is still on-line, TPG appears to have utilized both the H-1B and the J-1 visa programs. The Department of Labor's H-1B database indicates that TGP was certified for 100 teacher slots in 2001, 50 in Philadelphia, 25 in Newark, and 25 in Cleveland. The company also reportedly placed teachers in Upper Chester, Pennsylvania and Carroll County, Maryland.

In 2002, fifteen Indian teachers who were brought to teach math and science in Newark schools went public with the charge that TGP was extorting part of their wages from them and violating US labor and immigration laws. With the help of the Newark Teachers Union, they sought to invalidate the contract they were forced to sign with the company which obligated them to give about \$1 million of their gross earnings to TGP over a three year period.

According to a May 2002 article appearing in the on-line News India-Times, once the teachers arrived in the US, they were forced to sign a contract giving TGP 25 percent of their salaries.<sup>25</sup> When they were recruited in India, they signed a contract that did not mention the magnitude of the company's fee, and only told that they would have to sign another one once they arrived in the US. Other reports indicate that TGP may have been demanding up to one-third of the teachers' salaries. The News India-Times article says that "the teachers were threatened that if they did not sign the [new] contract they would be deported back to India."

In the wake of the news reports following the charges made by the teachers and the union, New Jersey Congressman Frank Pallone intervened, demanding an investigation by the INS. He argued that that by taking a portion of the workers' salaries, TGP was violating the H-1B law that requires H-1B workers to be paid the same rate as other domestic employees in the same position.

Press reports from other cities indicate that TGP ran into varying degrees of trouble over its fee and compensation practices in Philadelphia, Cleveland, Upper Chester, and Carroll County.<sup>26</sup>

In March 2003, the Department of Labor took action against TGP and fined both the company's founder and president \$120,000 in civil penalties for their illegal treatment of 15 H-1B teachers in its employ.<sup>27</sup> The DOL also required the company and its officers to pay a total of \$187,546 in back wages.

In a press release, the DOL confirmed the teachers' charges, saying that its investigation "determined that the employers had coerced and threatened the teachers with deportation, reducing their wages below the legally required wage rate."

"Abuse of the foreign labor certification program undermines the integrity of the program," said Irv Miljoner, district director on Long Island for the Labor Department's Wage and Hour Division, which conducted the investigation. The DOL also said it was "taking steps to bar the company and its principals from sponsoring" additional H-1B applicants for a period of two years. No mention was made, however, about teachers in other cities who were reportedly required to sign similar contracts with TGP.

In a brief telephone conversation, TGP founder and president Michael Vinjani declined to answer questions prior to having them submitted to him in writing. However, he did say that the company continues to recruit and place teachers in public schools. At the time of this writing, he had not replied to the series of questions that were sent to him.

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<sup>25</sup> <http://desitalk.newsindia-times.com/2002/05/24/hill-ins.html>

<sup>26</sup> <http://www.citypaper.net/articles/111501/cs.cover1.shtml>

<sup>27</sup> <http://www.dol.gov/esa/media/press/whd/whdpressVB.asp?pressdoc=boston/2003018>

## **5. Global Teachers Research & Resources, Inc., RK Resourcing, Inc., Silandi Corporation, International Teachers Recruitment, and Dasigi Overseas Staffing: A Network of Firms Focused On Recruiting Teachers from India**

From interviews and web searches, it seems clear that foreign teacher recruitment, placement and employment firms often work together. Below is a discussion of a sort of network involving at least five companies recruiting teachers from India.

Global Teachers Research & Resources, Inc. (<http://www.gtrr.net>) is based in Atlanta, Georgia and has 175 authorized H-1B teacher positions in several Georgia school districts, and an additional 50 positions for Maryland schools, including Prince Georges County. It also may have placed teachers in Tennessee and other states. GTRR appears to specialize in special education, math and science teachers and recruits its teachers from India. A GTRR representative, Andy Dakshina, said in a telephone conversation that there are “more on the way,” but declined to be more specific.

The firm’s founder and owner is listed as Dr. Paddy Sharma, who has taught for over 25 years in the US and India. GTRR says it has research and training centers in Madras and Hyderabad, India.

GTRR says it initiates contact with school systems, submits resumes of prospective teachers, arranges interviews (via telecom, video conferencing or in person), contracts with the school system for teachers’ services, and makes visa, travel and other arrangements for the teachers. As to the employment relationship, Dakshina said that its teachers are “contract employees” and the firm’s web site says that “GTRR will be the teacher’s employer for an initial decided period and later, if the school wishes, they can hire the teacher and place [him or her] on their payroll.”

There are some indications that GTRR also had an office in Edison, New Jersey at some point.

GTRR appears to be part of a network of India-related employment and placement agencies. For example, as can be seen from two of advertisements placed in Indian newspapers,<sup>28</sup> GTRR uses the services of an Indian company, RK Resourcing, to identify and recruit teachers. RK Resourcing says it specializes in recruiting and placing employees in a number of fields, including education. The company lists GTRR as one of its US “partners” (see <http://www.rkresourcing.com/partners.htm>). It also lists Silandi Corporation (<http://www.silandi.com/pages/956245/index.htm>) and International Teachers Recruitment (<http://www.teachers-recruitment-int.com>) as partners.

Silandi Corporation says that it is actually based in Texas and that it has openings for a number of teacher positions in that state.<sup>29</sup> These advertisements offer employment in Texas for math, science, and special education with projected salaries ranging from \$24,000 to \$40,000. Silandi’s web site says that it operates primarily in Texas, but that it will work with applicants who have specific information on job openings in other states. It charges a placement fee to the successful applicant, but does not disclose the fee on its web site: “as a part of our initial application package, candidate will be notified the total fee they need to incur. However, these fees are only

<sup>28</sup>See <http://www.hinduonnet.com/jobs/adv/01070870.htm> and <http://www.hinduonnet.com/jobs/adv/01070872.htm>

<sup>29</sup>See <http://www.indiaedujobs.net/schools/silandibottom30nov.asp> and <http://www.indiaedujobs.net/schools/silandibottom22jan.asp>.

payable after successful interview.” It also indicates that a successful applicant will have roundtrip transportation and one-month’s group housing paid by the company.

On a web site<sup>30</sup> sponsored by the Indian National Network of Education, an undated news item reported that “Nearly 40 teachers trained by the Rehabilitation Council of India (RCI) will be sent to the United States, as there is a shortage of Special Education Teachers in that country. Chairman, RCI Major H.P.S. Ahluwalia has received a request from SILANDI Corporation, Texas for teachers who have training in teaching disabled children. ‘They want to hire a number of them for a period of three years,’ he said. The teachers will be paid \$3,000 per month for the period.” A May 2003 request to an Indian university for college transcripts from an Eritrean teacher applying for a position with Salandi would indicate that the company is actively recruiting teachers (<http://www.bioinformatik.de/wwwboard/messages/1892.html>).

Claiming to have over twenty years experience the field, International Teachers Recruitment is a Palm Beach, Florida company that says it was “established to find, match, and place qualified foreign teachers to job positions throughout the United States.”<sup>31</sup> It says that it works to place job seekers in private and public schools and that successful applicants “would be eligible for employment in U.S. schools and education related organizations for multi-year contracts at salaries of salaries of \$30,000 to \$50,000 USD per year.”

While its web site makes no mention of fees or other financial arrangements, it appears to act as an employment agency with fees paid by either the job seeker or the employer (or both), depending on the circumstances. ITR also says that it can provide “foreign educated teachers with guidance and assistance to obtain either an H-1B or J-1 visa to seek teaching careers in the United States, and will place qualified candidates in schools and educational facilities throughout the country. We will arrange for an immigration attorney to assist you with the process, or you can use your own immigration attorney.”

One indication of ITR’s activities comes from an Indian company called Dasigi Overseas Staffing, Inc., which says on its web site that it has been retained by ITR to recruit teachers for US schools.<sup>32</sup> According to this site, successful applicants must pay for their own transportation, but do not have to pay a fee to Dasigi or ITR (other than a \$6 registration fee with Dasigi). According to Dasigi, it will forward completed teacher employment applications to its client, ITR, which “will in-turn post your details to the schools in USA. If any school is interested in your credentials, they will conduct telephonic interview and offer you a three year contract. The school or school district will sponsor the teacher for the visa or green card with the US Immigration and Naturalization Service.” Dasigi lists more than a score of “Business Representatives” or “Business Associates” in various Indian cities who can provide prospective applicants with additional details.

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<sup>30</sup> [www.indiaedunews.net](http://www.indiaedunews.net)

<sup>31</sup> The president and founder of the company is Dr. Robert Ross, who is also the former president and founder of Ross University School of Medicine on the island of Dominica and its School of Veterinary Medicine on St. Kitts. The medical school is now one of the largest in the world, with a reported 1,400 students. In April 2000, he sold a majority interest in the medical school to Weld/Leeds Investment Group, which also was an early investor in the Edison Project, for a reported \$150 million. He has also sold the veterinary school

<sup>32</sup> [http://www.dasigi.com/usa\\_teachers\\_requirements.html](http://www.dasigi.com/usa_teachers_requirements.html)

## **6. Superior Management Group (and 14 Affiliated Companies)**

An interesting case of a company seemingly “gaming” the H-1B application system is represented by California-based Superior Management and its 14 affiliated companies. These firms have applied for and received certification for 437 H-1B teacher visa authorizations. Each of the affiliated companies submitted four to twelve separate applications for one to seven authorized slots. Gurjeet Singh was listed on all of the applications as the “director of the applicant.”

“We recruit teachers from India, mostly for elementary schools,” Singh said in a telephone conversation. “We are an employment agency and the teachers are our employees.” He said that he started his companies in 2002 and has commitments from various school districts in California (which he declined to identify) to place all of the teachers for which he has authorization. “Unfortunately,” he continued, “our teachers’ visa applications are being delayed by the INS or the consulates. It’s taking a long time.”

When asked why he submitted so many different individual applications in the names of different companies, Singh said that his lawyers advised him to do so. “Not too many for any one company,” he says they told him. Singh said that all fifteen companies were owned by him, but were separately incorporated.

## **7. IntelAge, Inc.**

According to the H-1B database, IntelAge, Inc. obtained 33 authorized teacher positions in FY 2002, including 10 special education slots. Designated contacts are Dr. Nasreen Haque and Sowmiya Sikal. Haque seems to have taught physics at both Morehouse College and Georgia State University and currently teaches chemistry at Morris Brown College in Atlanta. Sikal appears to be an attorney practicing immigration law in Atlanta. According to the Georgia Department of Education’s “Georgia Learning Connections” web site section for foreign teachers seeking employment in the state, “Teachers from India can contact IntelAge, Inc., a small company specializing in placing math, science and special education teachers from India in teaching positions in metro-Atlanta schools districts.”

According to the minutes of a March 27, 2003 Cobb County, Georgia school board meeting, “Intelage, Inc. is an Atlanta-based vendor that works with DeKalb and Walton [counties], and will begin doing business with Gwinnett next school year. IntelAge recruits teachers from India in all fields, but specialize in middle and high school math, science, and K-12 Special Education.” These same minutes indicate that in 2001 the county school board had previously authorized the superintendent to negotiate with VIF for the placement of teachers. “At that time,” the superintendent wrote in his board agenda item, “we were unable to agree on a contract with VIF. If this agenda item is approved for next school year, each vendor will be required to sign our district’s contract, which was developed by our attorneys.” During this school board meeting, the superintendent was given authorization to enter negotiations with both IntelAge and VIF for the placement of up to 20 foreign teachers.

## **8. Universal Placement Services, Inc.**

Universal Placement Services, Inc., variously listed as located in Plantation or Ft. Lauderdale, Florida, appears in the DOL's H-1B database as having received certifications for 1,800 H-1B workers in dozens of occupational categories and 85 separate LCAs. Included in these are 65 teacher positions in 3 LCAs ("teacher," "teacher primary school education," and "teacher secondary school education"), with salaries either at \$862.38 biweekly, or \$14.04 per hour. Jose Acevido is listed as the administrator and Jason Santiago is listed as the contact person.

An individual only identifying himself as "Jay," briefly fielded a call. He said that the company is an employment agency and acknowledged that it applies for H-1B visa slots in many different industries. He expressed surprise that Universal Placement Services had been certified by the Labor Department for 65 teacher positions and said he'd check into it. A second telephone call elicited the statement: "You've got your facts wrong. That information is wrong." He then hung up.

## **PART THREE**

### **RECOMMENDED PRINCIPLES AND ACTIONS**

There are obviously many aspects to the recruitment of temporary foreign teachers in public school systems, some unique to educators and others applicable to the whole phenomenon of temporary nonimmigrant work visas. Moreover, the issues that the NEA will confront in this area range from broad policy questions to practical monitoring and contract enforcement considerations. Below are some initial recommendations for the NEA's consideration, based on the foregoing analysis.

#### Fundamental Principles Governing the Employment of Nonimmigrant Teachers (and others)

Any teacher hired to work in a School District should . . .

- Be an employee of the School District, not of a third-party sponsor or agency;
- Have the same compensation – salary and benefits – as other teachers with comparable; experience and skills (only perhaps adjusted to conform with such visa-specific requirements; as emergency medical transportation services back to the visa holder's home country);
- Have the same working conditions and protections as other teachers, including full coverage by any collective bargaining agreements that are in force; and,
- Have due-process rights that specifically protect them from the arbitrary revocation of their visas.

#### Recommended State Legislative and Bargaining Initiatives

Recent legislation in New Jersey (enacted with NJEA's active involvement) and new contract language achieved by Aurora, Colorado Affiliate AEA are excellent points of departure for other states and NEA Affiliates.

- In March 2002, the New Jersey Legislature adopted "An Act concerning the employment of teachers from foreign countries." Some of its key provisions include:
  - Approval for local boards of education to employ teachers from foreign countries, through an approved agency, in subject areas where the State Board of Education has determined there is a "contemporaneous critical shortage of certified teachers."
  - A requirement that, prior to hiring a teacher from a foreign country to meet a critical shortage, the local school board "shall first make a good faith effort to employ a State certified teacher and shall document its inability to hire an appropriately certified teacher."
  - A mandate that teachers from a foreign country employed pursuant to the Act "shall be deemed to be an employee of the public school district, and as such

shall be eligible to become a member of the bargaining unit defined in the applicable agreement with the public school district.”

- In its most recent contract with the Aurora Board of Education, the Aurora Education Association was able to obtain extensive language covering foreign teachers. Previously, there was no explicit provision covering such teachers, many of whom were placed by, and remained employees of, VIF. Some of the key provisions of this contract include:
  - A limitation on the board’s ability to hire foreign teachers to situations where a critical need exists for which the “pool of candidates (including Teachers in Residence) available domestically is not expected to be large enough to fill the vacancies within the District.”
  - A requirement that the board may hire a foreign teacher only after such openings are posted and “no qualified domestic candidates have applications on file with the District at the time the offer of employment is made.”
  - A provision stipulating that “Persons who are hired under the auspices of a firm in the business of providing teachers from foreign countries and who teach in the District, will be considered employees of the Aurora Public Schools and will be covered under all provisions of this Master Agreement Application” with the following exceptions:
    - Other than dental coverage, the school district will not be required to provide insurance or benefits (VIF provides medical and other insurance as a mandatory part of its program);
    - The temporary nonimmigrant teachers are not covered by contractual provisions governing teacher transfers, reductions in force, military leave, and elective office leave;
    - Grievances brought on behalf of or directly relating to a temporary nonimmigrant teacher will be moot if the teacher leaves employment with the district (for whatever reason), except that if the AEA “determines that the alleged contract violation impacts U.S. citizens who are in the bargaining unit, the Association shall be free to pursue the grievance.”

#### Recommended National Policies for NEA to Advocate

- The Fundamental Principles listed above should be incorporated into the rules governing all forms of temporary nonimmigrant work visas.
- The Labor Department should aggressively investigate employer claims about the prevailing wages they use to justify wage levels for H-1B employees and it should vigorously enforce the prevailing wage, comparable benefits, working conditions and other provisions of existing law.
- Employers should be required to demonstrate an actual shortage of specific available workforce skills before being granted the authority to employ nonimmigrant workers.



- Employers who employ nonimmigrant workers should be required to develop, contribute to and/or participate in a plan of action designed to alleviate a demonstrable workforce skills shortage with domestic employees.
- The Labor Department, the BCIS, and the State Department should be required to disclose much more extensive data on nonimmigrant work visa certifications and authorizations, including details by occupation, location, sponsoring organization (if any) and employer.
- The Exchange Visitor Program should be returned to its original cultural exchange roots; educational institutions that have a demonstrable need to recruit nonimmigrant teachers, researchers or other employees should do so via a reformed formal temporary work visa program.

# **APPENDICES**

1. Certified (Approved) H-1B Applications, Selected School Systems
2. Labor Department Certifications for H-1B Employment in K-12 by Type of Employer/Applicant and State
3. Aurora (Colorado) Education Association Contract Language Regarding Foreign Teachers
4. Text of 2002 New Jersey Statute on the Employment of Teachers from Foreign Countries
5. VIF Contract with the San Jose Unified School District for the 2000-2001 School Year
6. State Department Regulations Governing Sponsor Termination of Exchange Visitor Program J-1 Visa Holders

# APPENDIX 1

## Certified (Approved) H-1B Applications, Selected School Systems Fiscal Year 2002 (October 2001 - September 2002)

Location		School District / School	LCAs	Workers
City	State			
Bakersfield	CA	Kern County Superintendent of Schools	19	19
Compton	CA	Compton Unified School District*	82	82
Fontana	CA	Fontana Unified School District	52	79
Los Angeles	CA	Los Angeles Unified School District	7	75
Richmond	CA	West Contra Costa Unified School District	19	19
Sacramento	CA	Sacramento City Unified School District	44	44
San Bernardino	CA	San Bernardino County Unified School District*	23	23
San Jose	CA	East Side Union High School District	14	14
San Jose	CA	Alum Rock Union School District*	9	10
San Jose	CA	Campbell Union School District	3	3
San Jose	CA	Oak Grove School District	1	1
San Jose	CA	San Jose Unified School District*	25	156
Denver	CO	Denver Public Schools	19	19
Aurora	IL	School District 131*	13	240
Elgin	IL	School District U-46*	11	113
Romeoville	IL	Valley View Community School District 365U	7	100
Louisville	KY	Jefferson County Public School System*	3	22
Baltimore	MD	The New Baltimore City Board of School Commission*	18	65
Elizabeth	NJ	Elizabeth Board of Education	4	12
Cleveland	OH	Cleveland Municipal School District	4	122
Dayton	OH	Dayton Board of Education	7	60
Columbia	SC	Richland County School District One	19	53
Conroe	TX	Conroe Independent School District	3	101
Dallas	TX	Dallas Independent School District	88	88
Dickinson	TX	Dickinson Independent School District	2	101
Galveston	TX	Galveston Independent School District	6	138
Houston	TX	Aldine Independent School District	15	236
Houston	TX	Alief Independent School District*	18	213
Houston	TX	Cypress-Fairbanks Independent School District	1	100
Houston	TX	Galena Park Independent School District*	15	108
Houston	TX	Houston Independent School District	15	915
Houston	TX	Spring Branch Independent School District*	10	196
Houston	TX	North Forest Independent School District	2	30
Klein	TX	Klein Independent School District	1	50
Lufkin	TX	Lufkin Independent School District	6	44
Sugarland	TX	Fort Bend Independent School District*	13	258
Tomball	TX	Tomball Independent School District	2	100
Waller	TX	Waller Independent School District	1	100
		<b>Totals</b>	<b>601</b>	<b>4,109</b>

LCA = Labor Condition Application (usually, job title/salary combination)

\* Combines more than one record (usually because of minor spelling differences)

Source: **h1b.info** at [http://h1b.info/lca\\_search.php](http://h1b.info/lca_search.php); from data provided by the US Department of Labor from its H-1B-LCA database

NOTE: The total number of authorized positions do not necessarily equate to the total number of positions filled. After positions are authorized, individual visas must still be approved by the INS. Many employers appear to apply for significantly more positions than they actually intend to fill, just in case an unanticipated need arises; Also, sources at h1b.info believe that the DOL database it obtained is missing at least one or two months worth of data; thus the numbers reported here are incomplete for FY 2002.

## APPENDIX 2

### Labor Department Certifications for H-1B Employment in K-12 by Type of Employer/Applicant and State (Partial, US Fiscal Year, 2002)

State	Employer/Applicant				Grand Total
	Public Schools [1]	Private Schools [2]	Employment/ Placement Agencies [3]	Other [4]	
AK	7	2			9
AL	6	17		1	24
AR	4	3			7
AZ	39	20	2	7	68
CA	665	301	27	54	1,047
CO	44	21		3	68
CT	12	41		3	56
DC	58	90		2	150
FL	35	84	79	37	235
GA	53	30	238	5	326
HI		12		3	15
IA	6				6
ID		1		1	2
IL	481	36	7	19	543
IN	4	9			13
KS	4	2			6
KY	37	5		1	43
LA	32	16	1	3	52
MA	50	44		11	105
MD	107	52	15	53	227
ME	4	1		1	6
MI	8	25		3	36
MN	18	9		4	31
MO	21	6		1	28
MS		1			1
MT	10				10
NC	57	36	1	3	97
ND	2			1	3
NE	6	1			7
NH	2	8			10
NJ	51	101	1	86	239
NM	12	6			18
NV		2		2	4
NY	15	260		263	538
OH	195	15		8	218
OK	8	12		2	22
OR	17	14		1	32
PA	23	40	4	6	73
PR		1		3	4
RI	5	2		1	8
SC	71	5		1	77
SD		1			1
TN	5	7		1	13
TX	3,078	208	5	19	3,310
UT	3	2		1	6
VA	18	16		5	39
VT	1	15		1	17
WA	22	14		2	38
WI	8	7		1	16
WV	3				3
<b>Grand Total</b>	<b>5,307</b>	<b>1,601</b>	<b>380</b>	<b>619</b>	<b>7,907</b>
<i>Percent Total</i>	<i>67.1%</i>	<i>20.2%</i>	<i>4.8%</i>	<i>7.8%</i>	<i>100.0%</i>

[1] Includes direct applications by individual school boards, school districts and schools only

[2] Includes secular, religious, for-profit, and charter schools (where identifiable)

[3] Includes only companies specifically applying for authority to employ teachers in grades K-12

[4] Includes specialized employers (speech, developmental, arts, sports, pre-K) and others not readily classifiable.

Discussion: This table was derived from a partial dataset made available by the DOL and processed by the Webmaster of [h1b.info](http://h1b.info). The categorization of employers was performed manually by the author, based primarily on the employer's name combined with some Web searches. It is worth noting that a raw extract from the DOL's database yields a much larger dataset, but one that very obviously contains many duplications. The total for Texas public schools alone in the raw DOL data is 6,242, compared to the 3,078 reported in this table. To complicate things further, the DOL's database also includes positions certified by the DOL is approximately double the number of H-1B visas actually issued for FY 2002. For example, the DOL is authorizing 3,983 H-1B visas for elementary and secondary school employers of all types for FY 2002.

## APPENDIX 3

### Aurora (Colorado) Education Association Contract Language Regarding Foreign Teachers

#### **Aurora Education Association Article 44 Foreign Teachers**

The Aurora Education Association and the Aurora Board of Education recognize the need for qualified licensed teachers in every classroom. Both AEA and APS also recognize that at times there is a shortage of qualified domestic teachers in certain Critical Need Areas of instruction. A Critical Needs Area is defined as a subject matter, area of instruction, grade level, or area of subject matter expertise in which the pool of candidates (including Teachers in Residence) available domestically is not expected to be large enough to fill the vacancies within the District.

The District will notify the Association when a Critical Needs Area exists. The District will post openings in areas of critical need following guidelines set forth in Article 18. The District can, at the same time, consider filling the vacant position with a qualified educator from another country, and can fill the position with such a candidate if no qualified domestic candidates have applications on file with the District at the time the offer of employment is made. The term 'qualified domestic candidate' as used in the preceding sentence, is defined as a candidate who has had experience in the area which needs to be filled, has obtained the necessary licensing by the State of Colorado for that area of instruction, and whose background, recommendations and other characteristics meet minimum standards.

The District will notify the Association of the number of foreign instructors hired, and the subjects that they will be teaching, no later than the first day of the school year, or if such persons are hired after the start of the school year, promptly after hiring. If any provision of the Master Agreement is in conflict with state or federal law or regulation (including rules of the U.S. Immigration and Naturalization Service) relating either to non-citizens working in the United States or to any aspect of persons from foreign countries working under the auspices of a firm in the business of providing such persons, then such law shall supersede the Master Agreement.

#### **Application of the Master Agreement to Foreign Teachers**

Persons who are hired under the auspices of a firm in the business of providing teachers from foreign countries and who teach in the District, will be considered employees of the Aurora Public Schools and will be covered under all provisions of this Master Agreement with the following qualifications and exceptions:

1. Article 7 (Teacher Rights): Nothing in Article 7 is intended to expand coverage to such persons of any constitutional right, statute or law where they would not otherwise have enjoyed.
2. Article 11 (Compensation): Article 11, section 14: Such persons will not be provided any of the insurance coverages or benefits specified in section 14; except that such persons will be eligible for dental insurance. If the company providing any insurance coverage or benefit to APS or its employees now or hereafter takes the position that foreign teachers are not covered for any reason, APS will not have breached this agreement and will have no obligation to provide coverage from any other source or otherwise compensate the employee for the lack of coverage or the consequences of lack of coverage.
3. Articles 18, 19, 30 and 31: Such persons will not be covered under the following provisions of the Master Agreement: Article 18 (Teacher Transfers) ; Article 19 (Reduction in Force) ; Article 30 (Military Leave) ; and Article 31 (Elective Office Leave).
4. Article 43 (Grievance Procedure): If a foreign teacher, or the firm employing such a teacher, for any reason notifies the District that they will not be working the following year, or if the District chooses to

non-renew the teacher, then any grievance brought on behalf of or directly relating to that employee shall immediately be rendered moot and shall not proceed. However, if the Association determines that the alleged contract violation impacts U.S. citizens who are in the bargaining unit, the Association shall be free to pursue the grievance.

## APPENDIX 4

### Text of 2002 New Jersey Statute on the Employment of Teachers from Foreign Countries

P.L.2002, c.009 (A1152)

#### CHAPTER 9

AN ACT concerning the employment of teachers from foreign countries, amending N.J.S.18A:26-1 and N.J.S.18A:26-8.1, and supplementing chapter 27 of Title 18A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.18A:26-1 is amended to read as follows:

Citizenship requirement for teachers, exceptions.

18A:26-1. Every permanent teaching staff member employed in any of the free public schools for nine months or more, in any year shall be a citizen of the United States, except that any citizen of any other country, who has declared his intention of becoming a United States citizen and to whom there has been issued a teaching certificate in accordance with law, may be employed as a teacher so long as he holds a valid teacher's certificate and a teacher of foreign languages who has been a resident of the United States for less than 10 years and who is not a citizen of the United States may be employed in such capacity.

The requirement of citizenship shall not be construed to apply to a teacher from a foreign country who is enrolled with an approved international agency which operates a teacher placement program or teacher exchange program.

2. N.J.S.18A:26-8.1 is amended to read as follows:

Issuance of teacher's certificate to noncitizen.

18A:26-8.1. a. The State Board of Examiners may, with the approval of the commissioner, issue a teacher's certificate to teach in the public schools to any citizen of any other country who has declared his intention of becoming a United States citizen and who is otherwise qualified, but any such certificate may be revoked by the State Board of Examiners if the board is satisfied that the holder thereof has abandoned his efforts to become a United States citizen, or has become disqualified for citizenship, or shall not have become a United States citizen, within five years of the date of its issuance.

b. A declaration of intention to become a United States citizen shall not be required of a teacher from a foreign country who is enrolled with an approved international agency which operates a teacher placement program or teacher exchange program in order for the teacher to obtain any necessary certification to teach in the public schools.

C.18A:27-2.2 Employment of teachers from foreign countries under certain conditions.

3. a. A board of education may employ a teacher from a foreign country who is enrolled with an approved international agency which operates a teacher placement program in a subject area in which the State Board of Education has determined there is a contemporaneous critical shortage of certified teachers. Prior to the employment of a teacher from a teacher placement program in a subject area of critical shortage, the board of education shall first make a good faith effort to employ a State certified teacher and shall document its inability to hire an appropriately certified teacher with the Department of Education.

b. A board of education may employ a teacher from a foreign country who is enrolled with an approved international agency which operates a teacher exchange program, permitting a teacher from a foreign country to directly substitute for the services of a permanently employed State certified teacher.

C.18A:27-2.3 Authorization for employment of teachers from foreign countries, requirements for certification.

4. a. A teacher from a foreign country shall be authorized to teach in the United States under an international teacher placement program or a teacher exchange program as authorized by any federal law, and shall be certified in accordance with the provisions of subsection b. of this section to teach for a period of no more than three years.

b. In order for a teacher from a foreign country to be certified under this section, the teacher shall:

(1) meet the eligibility requirements for a provisional instructional certificate or possess equivalent qualifications as determined by the State Board of Education; and

(2) demonstrate the ability to speak, read and write the English language fluently, in accordance with criteria established by the State Board of Education.

c. A teacher from a foreign country employed pursuant to this act shall be deemed to be an employee of the public school district, and as such shall be eligible to become a member of the bargaining unit defined in the applicable agreement with the public school district.

5. This act shall take effect immediately.

Approved March 19, 2002.

[http://www.njleg.state.nj.us/2002/Bills/PL02/9\\_.HTM](http://www.njleg.state.nj.us/2002/Bills/PL02/9_.HTM)



## APPENDIX 5

### VIF CONTRACT WITH THE SAN JOSE UNIFIED SCHOOL DISTRICT FOR THE 2000-2001 SCHOOL YEAR

It has been difficult obtaining a copy of a VIF contract with a school district, not an unusual situation with a private, for-profit company. We were, however, able to secure a copy of the firm's contract for the school year 2000-2001, with the San Jose Unified School District (SJUSD). Before describing the key elements of this contract, two caveats are in order:

- While we were assured that the copy we obtained is the same as the one currently in force (with two changes of note, see below), we have no way to be certain that this contract is the same one VIF uses with other school districts around the country, although it appears likely.
- Moreover, the SJUSD is the teacher's employer in this case, but VIF says that it is the employer in others. These two different types of employment relationships may have led to the creation of different contracts. The SJUSD contract has what appears to be the unusual feature of being a three-party contract (among the school district, VIF and the teacher) that functions both as a commercial agreement and a sort of employment contract. Where VIF is the employer, it seems possible that its contract with a school district would be materially different and that there would be a separate employment contract between VIF and the teacher.

Below are the key provisions of the VIF-SJUSD-Teacher contract for the school year 2000-2001. Many elements are not covered, but the entire contract is available through Heidi Steffens.

- The initial term of the agreement is one year and may be renewed twice for a total of three years. However, after the initial term, there is no obligation on the part of VIF, the school district, or the teacher to agree upon additional terms.
- The school district agrees to pay VIF an administrative fee for the initial term and each additional term. This fee is \$11,000 per teacher<sup>33</sup> per term. The district is also charged an additional \$2,000 "specialized placement fee" per teacher per term for teachers in "critical need areas," defined as special education, math, and immersion. The school district also VIF advances funds for a \$2,250 Relocation Loan, which it recoups via payroll deduction (see below).
- The school district agrees to pay the teacher the same salary per school year as received by "a fully certified teacher with equal levels of experience and education"<sup>34</sup> once the teacher has fulfilled various licensing and credentialing requirements. The teacher will also be paid any local supplements for "assigned subject(s) paid to regular entry-level" teachers as well as any incentive bonuses paid to regular teachers in the district.
- The school district agrees to provide various forms of assistance to the teacher, including help finding housing, orientation, and the assignment of a mentor. The district also agrees that it is the teacher's employer for the purposes of the Family and Medical Leave Act. Also, the teacher and district agree that the teacher's employment is on a "temporary" and "nonpermanent" basis, as defined by California law.
- VIF agrees to provide the teacher with transportation to and from his/her home country, although the contract is somewhat unclear about whether the teacher will be provided with transportation home and back between the renewable terms.
- VIF agrees to provide the teacher with a one-week orientation prior to the commencement of classes and the district agrees that the teacher will have a minimum of one full day to arrange

<sup>33</sup> The SJUSD contract specifies a sliding scale of \$8,500 per teacher for 0 to 5 teachers hired, \$9,000 per teacher for 6 to 10 teachers, and \$11,000 for 11 or more. SJUSD Human Resources manager John Shannon says that the lower per-teacher fees for the first 10 teachers hired was an "introductory" price. He says the school district now pays \$11,000 per teacher per year.

<sup>34</sup> The contract provides that this salary "will be determined by VIF and the District per District's official 2000-01 Teacher Salary Schedule."

housing, transportation and so forth prior to the commencement of the teacher's duties with the district.

- Unless the teacher can demonstrate to VIF's satisfaction that he/she will have access to an automobile, the teacher is obligated to rent, lease or purchase a vehicle, "at VIF's sole discretion," from VIF Transport Company, Inc. (now renamed Chapel Hill Leasing). VIF also has the authority to require the teacher to purchase VIF Transport Automobile Insurance.<sup>35</sup>
- The teacher is required to obtain, or show proof of, various documents, licenses, and certificates. In addition, a condition of employment is the teacher's acceptance of a \$2,250 Relocation Loan, to be repaid without interest through the district's payroll deduction system.
- The teacher also agrees to either become a member of the San Jose Teachers Association or to apply to become a non-member, in either case paying annual dues of approximately \$734.
- Noting that teachers on the Exchange Visitor Program are expected to return to their country after a maximum of three years in the program, the contract provides that if the district hires the teacher during any time within one year after the teacher's relationship with VIF ceases, the district agrees to pay VIF a \$5,000 "permanent placement fee." In addition, if the district hires any former VIF teacher employed in another participating school district "at the end of such teacher's third year in the Program or following the end of VIF sponsorship" of the teacher, the district will pay VIF the same \$5,000 fee. The contract warns that VIF may "discontinue collaboration" with school districts that "habitually retain" teachers beyond the three-year limit set by the State Department.
- Either the teacher or the district is permitted to terminate their relationship without cause with twenty school days' prior notice. If the teacher terminates participation in the program, he/she agrees immediately to pay VIF \$1,500 as reimbursement for the cost of replacing the teacher.
- The district and the teacher acknowledge that, under the Exchange Visitor Program, VIF is authorized "to unilaterally terminate Teacher's participation in the program should Teacher perform in a manner which is deemed contrary to the VIF Program's objectives, rules and regulations."<sup>36</sup> The contract stipulates that if VIF terminates a teacher's employment, the teacher's visa will be terminated as well. Moreover, "VIF may terminate Teacher's Visa at any time for any or no reason and without notice."
- Whoever initiates the termination of the relationship, VIF retains in its sole discretion the right to require that the teacher reimburse it "for the full cost or any portion of the cost" of the teacher's round-trip transportation expenses.
- The contract incorporates the school district's personnel policies, rules and regulations into the agreement and the district agrees to provide the teacher with copies of such when the teacher reports for work.
- The teacher agrees to various noncompetition, nondisparagement and confidentiality provisions. The teacher agrees that, for two years, he/she will not accept employment teaching the same subject(s) as he/she taught under VIF sponsorship in any educational institution in California, Colorado, Georgia, New Jersey, South Carolina, Kansas or Virginia. The teacher acknowledges "that such employment would injure the legitimate interests of VIF and that the foregoing restrictions on teaching are fair and reasonable . . ." The teacher also agrees not to disclose any of VIF's "Confidential and Proprietary" information, defined as including VIF materials, recruitment methods, as well as lists of VIF teachers and recruitment representatives. In addition, the teacher agrees that "at no time will he/she denigrate, defame, disparage or cast aspersions upon VIF or any of its employees or services."

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<sup>35</sup> VIF's Mary Donney has indicated to NEA Executive Director John Wilson that these provisions are no longer in force, although we have separately heard of complaints by teachers who say they have been forced to lease automobiles from the company's affiliate.

<sup>36</sup> "Grounds for such termination include, without limitation: (i) any attempt to circumvent the three year limitation of stay without prior VIF approval; (ii) acts which bring the VIF program into disrepute; (iii) any breach of this Agreement; or (iv) any acts by Teacher constituting Cause . . ."

## APPENDIX 6

Department of State Regulations on Termination of J-1 Visa Holder by Sponsor
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[Code of Federal Regulations]  
[Title 22, Volume 1]  
[Revised as of April 1, 2002]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 22CFR62]

[Page 311-315]

### TITLE 22 FOREIGN RELATIONS

#### CHAPTER I--DEPARTMENT OF STATE

##### PART 62--EXCHANGE VISITOR PROGRAM--Table of Contents

##### Subpart C--Status of Exchange Visitors

##### Sec. 62.40 Termination of program participation.

(a) A sponsor shall terminate an exchange visitor's participation in its program when the exchange visitor:

(1) Fails to pursue the activities for which he or she was admitted to the United States;

(2) Is unable to continue, unless otherwise exempted pursuant to these regulations;

(3) Violates the Exchange Visitor Program regulations and/or the sponsor's rules governing the program, if, in the sponsor's opinion, termination is warranted;

(4) Willfully fails to maintain the insurance coverage required under Sec. 514.14 of these regulations; or

(b) An exchange visitor's participation in the Exchange Visitor Program is subject to termination when he or she engages in unauthorized employment. Upon establishing such violation, the Department of State shall terminate the exchange visitor's participation in the Exchange Visitor Program.