



**CODE OF ETHICAL INTERNATIONAL
RECRUITMENT & EMPLOYMENT
OF TEACHERS**

Alliance for **ETHICAL
INTERNATIONAL
RECRUITMENT** *Practices*

CODE FOR THE ETHICAL INTERNATIONAL RECRUITMENT
&
EMPLOYMENT OF TEACHERS

PREAMBLE DRAFT

The following Code is the product of a multi-stakeholder deliberation that included recruiters, employers, and unions. The authors of this Code have divergent and sometimes opposing opinions and interests regarding international recruitment of teachers, but have worked together to arrive at mutually agreed upon minimum standards and best practices for these activities.

Underpinning this Code is an acknowledgement that individuals have a right to migrate in pursuit of improved working conditions and expanded professional opportunities. To the extent that the migration of teachers is facilitated by active international recruitment, this Code seeks to maximize the benefits and minimize potential harm for all parties involved in, or affected by, the international recruitment process. International recruitment of educators to the United States is motivated by two distinct purposes:

Teacher Shortages:

A large number of teachers have been recruited internationally for the purpose of addressing structural and persistent shortages in rural and urban schools, particularly in the content areas of math, science, special education and bilingual instruction. Such recruitment is undertaken only when schools have determined that there are not a sufficient number of qualified domestic candidates. Teachers recruited for this purpose are meeting acute needs. This international recruitment model should support the search for lasting solutions to persistent shortages and should not exacerbate the problem of teacher turnover.

Professional and Cultural Exchange:

Cultural and professional exchange programs strive to diversify the content of school curricula and enhance the quality of instruction through the interaction of U.S. students and teachers with educators from around the world. International exchange teachers add value to U.S. education by broadening language skills and increasing exposure to other cultures and perspectives. Exchange programs are designed to purposefully internationalize the teaching profession and to better prepare U.S. students and teachers to succeed in a globalized world. Teachers recruited for this purpose come to the United States for a finite period of time with the intent to return to their home country to share new educational tools, pedagogical models, and cultural experiences with students and colleagues and act as cultural ambassadors for the United States. It is a premise of this Code that these two goals should be differentiated. The visas

used in each case are different. H-1B and permanent employment visas are intended for labor shortages. J-1 visas are intended to promote cultural exchange. While sometimes these two goals overlap, i.e. international teachers recruited to address shortages can also facilitate cultural exchange, in order to be fair and transparent to teachers it is important to acknowledge which of the two is the primary goal.

While this Code addresses the obligations of parties involved in recruiting teachers to the United States, it also acknowledges that such recruitment can and often does have an impact on the countries from which teachers are recruited. Signatories to this Code commit to taking all possible measures to minimize disruptions to the delivery of education services in sending countries, as well as to supporting the quality of teaching and learning in all affected education systems through the exchange of best practices.

TABLE OF CONTENTS

Section A	Federal State & Local Laws, Regulations & Policies	p. 1
Section B	Procedural Immigration Practices	p. 2
Section C	Pre-Contract Disclosures to All Parties	p. 3
Section D	Contract & Employment Practices	p. 6
Section E	Cultural & Professional Orientation	p. 9

Section A

FEDERAL, STATE & LOCAL LAWS, REGULATIONS & POLICIES

1. All Recruiters & Employers are Required to Follow Federal, State & Local Immigration, Employment, Contract, & Labor Laws.³
2. Internationally Recruited Teachers are Protected Under U.S. Law & Enjoy the Same Rights & Protections as Similarly Employed U.S. Workers. U.S. Law Requires Employers to Provide Working Conditions on the Same Basis & Criteria as Provided to Similarly employed U.S. Workers (i.e. hours, shifts, vacations, and seniority-based benefits).⁴

For information on pertinent legal provisions, please see Teacher Code Appendix A, available at www.fairinternationalrecruitment.org

⁴See U.S. Department of State “Know Your Rights” resources for internationally recruited workers at URL <http://www.travel.state.gov/pdf/Pamphlet-Order.pdf>.

Section A

Section B

Section C

Section D

Section E

PROCEDURAL IMMIGRATION PRACTICES

1. Visa Type Disclosure

Recruiters and employers shall provide clear disclosure about benefits/limits of visa type used to hire internationally recruited teachers in advance of signing a contract, including:

- 1.1 If there is an available path to permanent employment and/or citizenship under visa type;
- 1.2 Maximum length of stay; and
- 1.3 Rights of spouses and children under visa type.

2. Visa Requirements Disclosure

Recruiters and employers shall provide full disclosure of administrative obligations and timelines relating to the visa type used, including:

- 2.1 A clear system for re-verification on or before the expiration date of the employee's authorization;
- 2.2 The right to seek separate, independent legal advice and representation, distinct from immigration/employment attorneys provided by or working for employer or recruiter.

3. Documentation

Green cards, passports, certifications, permits, visas, social security cards, or other official documents shall not be withheld from teacher applicants or employees.

4. Privacy

Teachers shall be required to provide only such personal information as required for the processing of their visa or employment paperwork.

PRE-CONTRACT DISCLOSURES TO ALL PARTIES

1. Transparency

- 1.1 Recruiters and employers shall commit to transparent, truthful information in recruitment materials and communications.
- 1.2 The aspiring candidate shall be provided with a copy of this Code at the outset of any recruitment relationship and be allowed 48 hours to read it before being asked to sign a contract.
- 1.3 Sponsors should clearly specify whether the teacher is being recruited as part of the J-1 visa exchange program, or to address a labor shortage utilizing the H-1B or permanent employment visa provisions.
- 1.4 The aspiring candidate shall be provided [pre-contract] with information regarding all details of the teacher licensure/credential requirements for the state in which they will be employed. This shall include information on steps required to obtain both preliminary and full credentialing.

2. Fees and Services

Teachers shall not be charged visa fees or fees for legal services necessary to process any part of the visa application. These fees are considered business expenses, and must be paid by the employer unless the internationally recruited teacher is compensated for the fees in an amount over and above the prevailing wage.³

Teachers shall not be charged placement fees, marketing fees, school district fees, or fees for orientation and training in their new places of employment unless such fees provide a direct and tangible benefit to the teacher separate and distinct from securing the visa or the job, and disclosure and collection of allowable fees must adhere to the ethical standards outlined in this section.

³ Federal regulation stipulates that “Where the employer depresses the employee’s wages below the required wage by imposing on the employee any of the employer’s business expenses(s), the Department will consider the amount to be an unauthorized deduction from wages even if the matter is not shown in the employer’s payroll records as a deduction.” See Federal Register / Vol. 65, No. 245 80220.

It is the obligation of the employer to comply with federal regulations regarding the payment of these fees. All fees and fee collection terms must be compliant with federal regulations regarding the applicable visa category.⁴

2.1 Visa fees

J-1 sponsors shall not require that exchange visitor teachers pay any fee for participation in the program.⁵

H-1B sponsors are required to pay all visa processing fees and may not recoup these fees from teachers directly or indirectly⁶

All greencard (PERM) sponsors, including sponsors of EB-2 visas, are required to pay the visa filing fees.

2.2 Total allowable fees: Total allowable fees shall not reduce wages below the recognized prevailing wage for that position. Money collected by recruiters or employers against wages is only permitted for items and services requested or accepted by teachers for their personal benefit and must be provided at or below fair market value.

2.3 Application fees: Application fees are permissible as long as they are nominal (i.e. under \$150).

2.4 Fee disclosures:

Parties shall fully disclose the purpose and amount of fees prior to any attempt to collect fees or execute contracts.

Fee disclosures shall be provided in writing.

⁴ For more information on the rules governing visa types see Teacher Code Appendix B and other useful resources at www.fairinternationalrecruitment.org.

⁵ For J-1 visas, the general costs for operation of the program shall be born by the sponsor and host schools. Any fees charged by J-1 sponsors or host schools for incidental services such as program development, credentialing or similar services shall amount to not more than 1% of annual compensation in aggregate, excluding exchange visitor teacher contributions for health, medical evacuation, repatriation, life or other similar program insurance or benefits.

⁶ H-1B sponsors are prohibited by law from charging teachers visa fees, either directly or indirectly. "Employers should note that under section 413(a) of ACWIA, which amends section 212(n)(2)(C) of the INA, an employer may not require an alien beneficiary to reimburse or otherwise compensate the employer for all or part of an H-1B petition filing fee." At URL: http://www.uscis.gov/Petitioning_Requirements_for_the_H-1B_Nonimmigrant_Classification_Under_Public_Law_105-277 [63 FR 65657] [FR 80-98]. See also 20 CFR 655.731, "The employer may not receive, and the H-1B nonimmigrant may not pay, any part of H-1B filing fee."

Fee disclosures shall include a clear explanation of fee amounts and list services to be provided.

Proper fee disclosure shall identify:
The party responsible for payment;
A schedule for when fees are due; and
The method by which fees shall be collected.

Any fees demanded with no notice are considered coercive and are not permissible

- 2.5 Duplicative fees: Agencies may not collect duplicative fees from teachers and employers for the same service.
- 2.6 Fee advances and loans: Teachers are free to choose how, when, and if to borrow money to pay for fees and other costs. Recruiters may not require teachers to utilize recruiter-approved lenders if teachers choose to borrow funds to pay for costs.
- 2.7 Housing costs: When recruiters or employers arrange housing or transportation services to teachers written consent from the teacher, together with full disclosure of the cost in advance of arrival in the United States, is required.

CONTRACT & EMPLOYMENT PRACTICES

1. General Contracting Principles

- 1.1 At least 48 hours will be provided to teachers to review a contract before signing.
- 1.2 Teachers working in the U.S. under H1B visa status should be employed directly by schools and schools districts. It is inappropriate for recruiters utilizing H1B visas to serve in a direct employment capacity.^{3,4}
- 1.3 A designated exchange visitor program sponsor may share with the host school the responsibilities of employing visiting teachers in J-1 visa status provided that (1) the relationship enables the sponsor to comply with its regulatory obligations to support the health and welfare of the visiting teachers and facilitate the professional and cultural exchange component of the program; (2) the visiting teachers are teaching at the host school on a temporary basis for the purpose of improving student cultural and language knowledge through direct international exposure; and (3) the compensation, benefits and other terms of the teaching position are consistent with any applicable collective bargaining agreement, where one exists.
- 1.4 If a teacher is required to sign separate contracts with the recruiter and the employer, the recruiter and employer bear the responsibilities detailed below.

2. Teacher/Recruiter Contracts

- 2.1 If no contract exists between the teacher and the recruiter, the recruiter shall provide the teacher with a written disclosure explaining the recruitment process including appropriate disclosure of fees. (See provision §3 Part II(d) above.)

³ A survey of school superintendents conducted by this Task Force revealed that two thirds disapprove of the use of staffing agencies to employ internationally recruited teachers.

⁴ In January 2010 USCIS released a technical guidance Field Memo, authored by Donald Neufeld, Associate Director of Service Center Operations, concerning the "requirement that a petitioner establish that an employer-employee relationship exists and will continue to exist with the beneficiary throughout the duration of the requested H-1 B validity period." Specifically, the guidance indicates "the petitioner must be able to establish that it has the right to control over when, where, and how the beneficiary performs the job." This type of direct supervision is not present in third-party placement arrangements.

- 2.2 Teachers shall not be required to sign more than one recruitment contract related to the recruitment process and must be provided a clear explanation of each party's responsibilities and obligations described in that contract.
- 2.3 Once signed, an executed copy of the contract will be provided to teachers by the recruiter and the employer.
- 2.4 Teachers shall not be required to sign contracts until the recruiter has an actual job offer for the teacher and recruitment contracts must stipulate who the employer will be.

3 Employer/Recruiter Contracts

- 3.1 Employers are responsible for recruitment practices of the recruiting companies they retain and for reviewing contracts between recruiters and teachers in order to understand the impact a teacher's contract with a recruiting company may have on the terms and conditions of employment.
- 3.2 Contracts must clearly stipulate which type of visa will be used and the timeframes and standards for visa renewal.

4 Employer/Teacher Contracts or Employment Agreements

- 4.1 Employers shall execute a written job offer or contract with teachers, even when utilizing the services of a recruitment agency. Employer recruitment terms must be stipulated in writing and include a proposed start date.
- 4.2 Employers will time employment contracts to ensure teachers can complete the school term in their home countries and arrive in the United States with sufficient time to be settled and prepared to start on the first day of the school year, thus minimizing disruption to the learning process for students in both the sending country and the U.S. school.
- 4.3 Internationally recruited teachers will be subject to the terms and conditions of collective bargaining agreements, where such agreements are in place.
- 4.4 Where no collective bargaining agreement exists, teachers shall receive wages and benefits that are paid to other teachers of like qualifications in the same job classification.

- 4.5 The recruited teachers shall be provided by employers with early and timely information regarding the requirements and steps needed to satisfy state teacher licensing requirements, particularly as it pertains to movement toward completing and sustaining full licensure/state credentialing.
- 4.6 Compensation must be commensurate with prevailing wage standards, advanced degrees, and years of teaching experience.
- 4.7 Performance evaluation policies and procedures for internationally recruited teachers under all visa types should be the same as those in effect for other teachers.
- 4.8 If the employer intends to renew a teacher's visa, the visa renewal process and/or green card petitions for teachers with satisfactory job performance shall be filed in a timely fashion.
- 4.9 If visa renewal is not intended, employers should provide justification in keeping with local policies and procedures. Employers must also provide adequate notice as well as timely, structured disengagement services.
- 5.0 Employers should establish clear processes and criteria regarding sponsorship of petitions for permanent residence.

CULTURAL & PROFESSIONAL ORIENTATION

1. Providing Orientation

Teachers are entitled to adequate cultural and professional orientation, and clear disclosure regarding which party (i.e. employer, recruiter, and worksite supervisor) is responsible for providing it.

2. Professional Orientation

Employers are responsible for development and execution of a professional orientation program that includes a mechanism for ongoing support and addresses, at minimum:

- 2.1 Student demographics and culture;
- 2.2 Classroom management;
- 2.3 Performance evaluations for students and staff; and
- 2.4 Parent or community relations.

3. Recruiter Employment Requirements

If a recruiter has unique requirements related to employment programs they administer, it is the recruiter's responsibility to provide teacher participants with adequate and timely training.

4. Orientation of Other Staff

Employers shall provide training and support for principals, other administrators, staff, and fellow teachers to anticipate the contributions and potential challenges of recruiting teachers from other countries.

5. Cultural Orientation

Cultural orientation, including information on local community resources (e.g., public transportation, medical centers, schools, libraries, recreation centers, and banks) shall be provided by the recruiter or employer, and parties shall agree in advance about which party is responsible for this activity.

6. Family Orientation

Where appropriate spouses and children of teachers should be included in cultural orientation.

ACKNOWLEDGEMENTS

THE ORIGINAL TEXT OF THIS CODE WAS DRAFTED BY:

Ana Avendano, AFL-CIO

Ligaya Avenida, Avenida International Consultants

Luz Bermudez, Alief FT Civil and Human Rights Committee

Ingrid Cruz, Filipino Educators Federation of Louisiana

David Edwards, National Education Association

Julette Forstenzer Espinosa, the George Washington University

MaryAnn Jobe, American Association of School Administrators

Judith Hall Jones, Association of International Educators (AIE)

Shannon Lederer, American Federation of Teachers (AFT)

Rogie Legaspi, Filipino Educators of Maryland

Marianne Mason, Cordell Hull Foundation

Millet Panga, Philippine Educators Network

Eric Paisner, National Alliance for Public Charter Schools

Patricia Pittman, The George Washington University

Dennis Sinyolo, Education International

Patty Yoo, National Association of State Boards of Education

David Young, VIF International Education

We would like to acknowledge that the initiative to develop this Code was supported by the John D. and Catherine T. MacArthur Foundation.

Section A

Section B

Section C

Section D

Section E