

# Pros and Cons of Using Foreign Labor and Outsourcing

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## 2022 New Mexico Educator Vacancy Report

- ❑ Prepared by New Mexico State University College of Health, Education and Social Transformation
  - ❑ Southwest Outreach Academic Research (SOAR) Evaluation and Policy Center
- ❑ October 4, 2022
- ❑ Total vacancies in public schools: 1,344



**SOAR: Southwest Outreach Academic Research  
Evaluation & Policy Center**



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# SOAR Report, Oct. 2022

Position	Number of Vacancies
Teachers	690
Educational/Instructional Assistants	446
Paraprofessionals	39
Speech Language Pathologists	36
Counselors	32
Emotional/Behavioral Support Providers	24
Administrators (Principals and Assistant Principals)	20
Interventionists	19
School Psychologists	15
Educational Diagnosticians	12
Instructional Coaches	11
<b>Total Vacancies</b>	<b>1,344</b>

Table One: Educator Vacancies by Position



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# SOAR Report, Oct. 2022

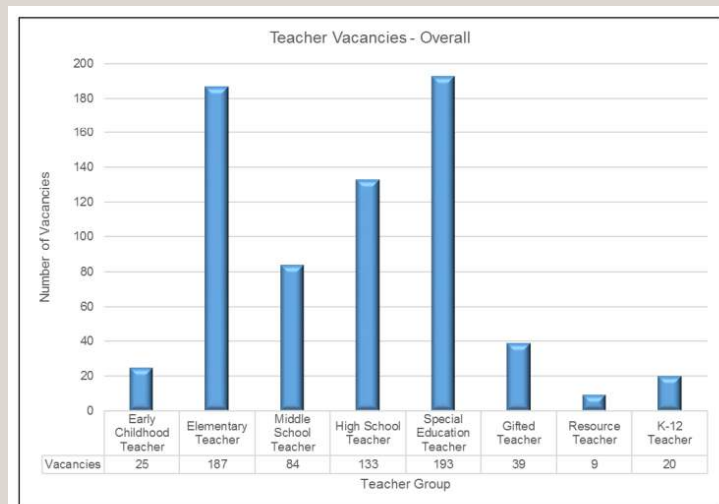


Figure One: General Breakdown of Teacher Vacancies



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# Human Resources Efforts to Fill Positions

## Want To Become a Teacher? You Could Land a \$25K Signing Bonus

Labor shortages continue to impact schools. As the academic year approaches, more districts are offering generous incentives to entice staff

### Lead Toddler Teacher (Sign on Bonus and Free Tuition)

Austin Kids Retreat - Austin, TX

\$500 Sign on Bonus. For our full time staff we offer medical, dental, vision, life and disability insurance, paid time off, and as previously stated FREE...  
\$15 - \$18 an hour [Quick Apply](#)

## How schools are trying to address the national teacher shortage

School districts are using financial incentives, relaxed qualifications and even shortened school weeks to attract teachers.

### Special Education Teacher (Sign-on bonus included)

SESI Schools - Angleton, TX 3.4★

Sign-on bonus up to \$2,000. Our teachers and staff provide individualized academic and behavioral interventions with an innovative learning approach,...

\$58,000 - \$65,000 a year [Quick Apply](#)

#### 2023-24 TEACHER HIRING INCENTIVES

2022-23 Jump Start Bonus (\$1,000) [Expand All](#)  
Early Commitment (\$2,000) >  
Welcome Home for Teachers (\$500) >

#### 2023-24 CONTENT SIGN-ON BONUS (MAXIMUM OF ONE CONTENT BONUS)

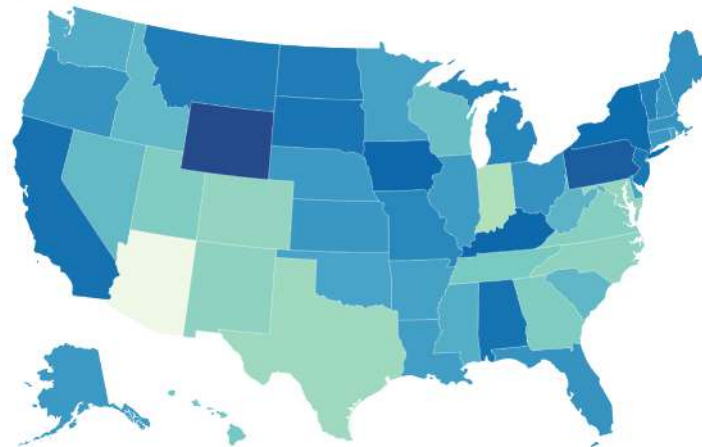
PreK-5 Bilingual (\$5,000) [Expand All](#)  
Special Education (\$3,000) >  
Secondary Math, Science, or ELAR (\$3,000) >



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Teaching Attractiveness Rating

1.3 4.57



Source: Learning Policy Institute



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## Is Your District Facing Labor Shortages?

- No (Congratulations!)
- I don't know!
- Yes (In which areas?)

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Foreign Labor

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## Foreign Labor - The Basics

- Foreign worker with NM License (teacher or para-professional)
- Temporary employees (limited by visa issued by immigration services)
- Legal employment
- Treated like all other employees except:
  - Some tax treatment;
  - If they are terminated or non-renewed during visa term, District pays for their trip home.
- Can come from any country in the world
  - Most common: India, Philippines, China, Mexico and Spain

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## F1 - OPT

- Foreign Student with work authorization
  - One year authorization for teachers
  - Three year authorization for STEM graduates
  - Given to graduates of Bachelor, Master or Doctoral Degree
- University provides all immigration paperwork necessary for employment
- No extensions are available

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## J1 Visa

- ❑ Teachers only
- ❑ District is not the visa sponsor (does not request visa from immigration services)
- ❑ Visa sponsors: private companies approved by Department of State
  - ❑ District has a contract with a visa sponsor for teachers
  - ❑ District can use multiple sponsors
  - ❑ Sponsors charge the District and/or the Employee for their services

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## J1 Visa Pros and Cons

- ❑ Pros:
  - ❑ 3-year visa (with a two year extension)
  - ❑ District does not need to deal with immigration services directly
  - ❑ Can request teachers to fill hard-to-fill positions (i.e., Special Education)
  - ❑ Includes Employee's family with separate work authorization
- ❑ Cons:
  - ❑ District and Employee may need to pay to renew each year
  - ❑ Two-year foreign residency requirement (cannot extend stay in another visa type)
  - ❑ Sponsor fees and recruiter fees can place financial strain on Employee

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## H1B Visa

- ❑ Any professional with a Bachelor's Degree
  - ❑ Teachers
  - ❑ Speech/language pathologist
  - ❑ IT positions
  - ❑ Administrator positions that require BA
- ❑ District is the direct visa sponsor
  - ❑ Must file with immigration services
- ❑ Requires agreement with institution of higher learning
  - ❑ Student teacher placement is most common agreement

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## H1B Pros and Cons

- ❑ Pros:
  - ❑ Three-year visa (with a three-year extension)
  - ❑ Visa is tied to your District (Employee cannot work anywhere else)
  - ❑ Includes family
  - ❑ Only file for foreign worker you select (including hard-to-fill positions)
- ❑ Cons:
  - ❑ District must deal with immigration services directly
  - ❑ Family members cannot work (but can attend schools/university)

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## J1 and H1B Cost Comparisons

- ❑ J1 Fees (using Teach USA as an example):
  - ❑ Employee pays:
    - ❑ \$2,950 for first year, \$1,250 per additional year
    - ❑ \$160 interview fee
    - ❑ Extension application fee \$750 (for additional two years)
    - ❑ Extended program sponsorship: \$950
  - ❑ H1B Fees (using our office as an example) :
    - ❑ Employee pays:\* Legal fees (approximately \$3,000 for first three-year visa and \$2,000 for renewal)
    - ❑ Employer pays: \$960 for first three-year visa, and \$460 for second three-year visa

\*Assumes employee makes more than \$53,000 annual salary

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## What the Board May Be Asked to Approve

- ❑ J1 Visas
  - ❑ Contract(s) with J1 sponsors
  - ❑ Budget items to cover sponsor costs (if required)
  - ❑ Budget items to cover return travel (if terminated)
- ❑ H1B Visas
  - ❑ Budget items to cover filing fees and renewal fees (can use ESSER Funds)
  - ❑ Budget items to cover legal fees (if approved or required)

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## NM Independent Contractor Provisions

- Registration with the NM Department of Taxation and Revenue to pay gross receipts tax;
- The existence of a written contract with the District for the services to be provided and the compensation to be paid;
- Whether the person receives benefits such as paid annual or sick leave, health insurance and other benefits that the District provides its regular employees.
- Whether the person satisfies the IRS guidelines for determining that an individual is an independent contractor.

2.82.2.11 NMAC (2023).



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## Independent Contractor Status

- ❑ Internal Revenue Service (IRS) factors based on:
  - ❑ Behavioral Control:
    - ❑ The amount of control over the individual via specific instructions (where, when, how to do work), training and evaluations 🙅
  - ❑ Financial Control:
    - ❑ The type of compensation, reimbursed expenses 🙅
  - ❑ Relationship Control:
    - ❑ Written contract, 👍 employment benefits, 🙅 length of services
  - ❑ Key Activity Business:
    - ❑ Functions integral to District (i.e., Teacher) 🙅

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## Key Activity of Business

- ❑ Strong emphasis on this fourth IRS factor on work that is integral to the business of the employer.
- ❑ For schools, these are often positions that work exclusively with students.
- ❑ Can include all positions that provide educational services, including:
  - ❑ Teaching
  - ❑ Tutors
  - ❑ Homebound Teacher
  - ❑ Clinicians
  - ❑ Consultants who work with students
  - ❑ Occupational Therapist
  - ❑ Physical Therapist
  - ❑ Speech Therapist
  - ❑ Orientation and Mobility Specialist

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## Additional IRS Factors

- Did the Independent Contractor work for the District before, particularly in the current or prior school year?
- Is the Independent Contractor performing the same or similar job they performed as an employee or that current employees perform?
- Is the Independent Contractor a real "business", such as a corporation, a limited partnership, or at least a DBA with a company name and tax ID number, or is it a solo individual using an SSN?
- Does the business have a website, employees, and use its own resources and materials?

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## Standard Procurement Rules

- "All procurement shall be achieved by competitive sealed **bid** pursuant to Sections 13-1-103 through 13-1-110 NMSA 1978." NMSA 1978, § 13-1-102.
  - Step 1: Invitation for bids
  - Step 2: Public Notice
  - Step 3: Receipt and acceptance of bids
  - Step 4: Bid opening (opened publicly in the presence of one or more witnesses)
  - Step 5: Award (with reasonable promptness)

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## Competitive Sealed Proposals (RFP)

- ❑ What is the difference?
  - ❑ Proposals are for professional services
  - ❑ Proposals can also be used for facility maintenance, service and repairs
- ❑ Step 1: Request for Proposals
  - ❑ Specification of services to be provided
  - ❑ Contractual terms and conditions
  - ❑ Campaign contribution disclosures
  - ❑ Evaluation factors (NMSA 1978, § 13-1-114)

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## Competitive Sealed Proposals (RFP), con't

- ❑ Step 2: Public Notice
- ❑ Step 3: Negotiation – “Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals.”
- ❑ Step 4: Award – The Award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the state agency or a local public body, taking into consideration the evaluation factors set forth in the request for proposals.
- ❑ Step 5: Celebrate – you made it through an RFP process and found the right agency to help with your District needs!

NMSA 1978, §§ 13-1-111 to 13-1-118.

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## Alternative Procurement Rules

- ❑ Small Purchases: may purchase services under \$60,000
  - ❑ NMSA 1978, § 13-1-125
- ❑ Sole Source Contracts: There is only one provider of the services available
  - ❑ NMSA 1978, § 13-1-126.1
- ❑ Emergency Procurement:
  - ❑ Needed immediately (to plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by flood, fire, epidemic, riot, act or terrorism, equipment failure or similar event)
  - ❑ Cannot be acquired through normal procurement methods
  - ❑ NMSA 1978, § 13-1-127

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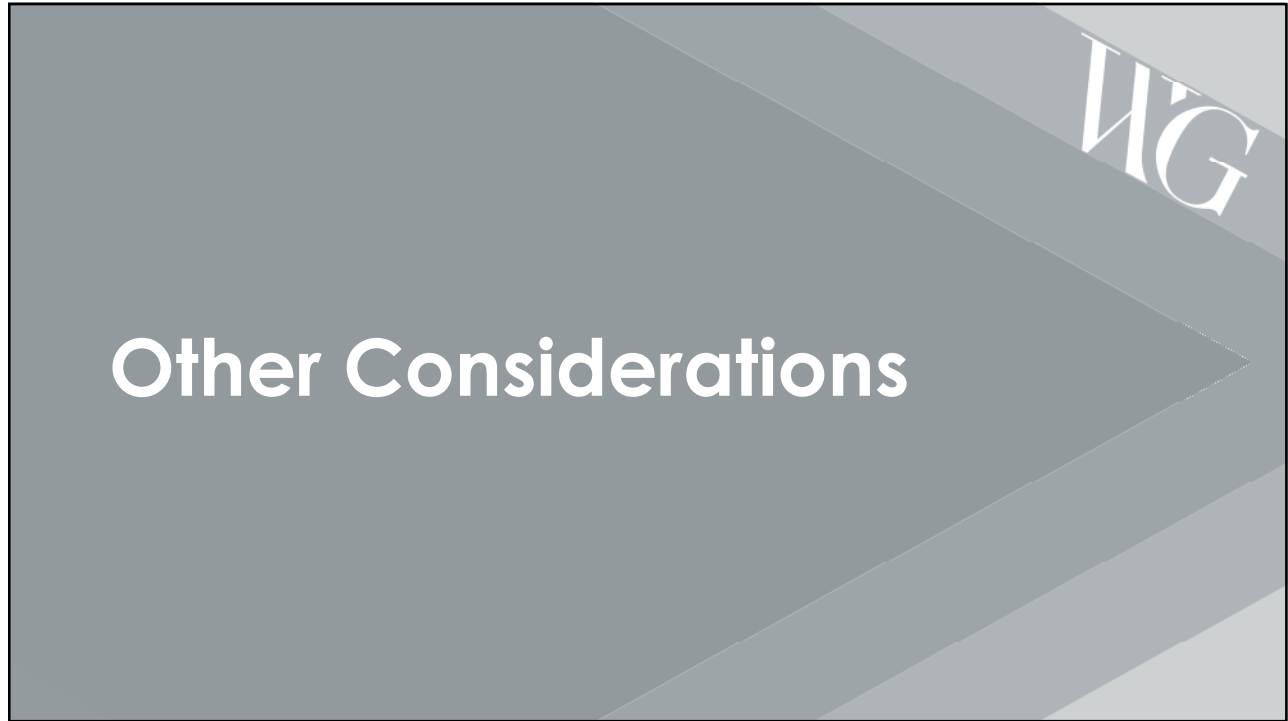
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## Outsourcing Pros and Cons:

- ❑ Pros:
  - ❑ You pay for someone else to have the responsibility of finding the right employee.
  - ❑ You do not have to make employer contributions (FICA, retirement).
  - ❑ The hired entity specializes (hopefully) in the services requested.
- ❑ Cons:
  - ❑ You can't control the work – they are not your employee.
  - ❑ Typically more expensive than direct hire (you are paying management overhead).

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## Collective Bargaining?

- Is Foreign Employee covered by collective bargaining protections?
  - Unless there is a specific exclusion in the CBA, should be treated the same as all other employees.
- Is the position covered by the collective bargaining agreement?
  - District may have obligation to bargain over the effects of outsourcing on bargaining unit employees. Developing Labor Law, Ch. 16.IV.C.2.m(1).
  - You don't have to ask for permission, but you have to negotiate the effects of outsourcing on current employees



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## Beware “Personnel” Issues

- ❑ Foreign workers are employees – Superintendent is the supervisor even where the Board approved the contract.
- ❑ Outsourced groups
  - ❑ Not employees
  - ❑ Not supervised by District
  - ❑ How do you address “corrective” actions?
    - ❑ Board action
    - ❑ Superintendent can be assigned representative

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The information in this presentation was prepared by Walsh Gallegos Treviño Kyle & Robinson P.C. It is intended to be used as general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

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