

Managing Property/Liability Risks In Public Education (A to Z)

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by

Paula Chu Tanguay, ARM
Chief Executive Officer

Alliance of Schools for Cooperative Insurance Program
(ASCIP)

Goals for Today

Define the Risk Management Process

Identify Property/Liability Exposures and Coverage

Examine Ways to Mitigate Losses and Promote Safety

Manage Claims and Litigation When You Get Sued

Evaluate Options for Funding Losses

Pick the Right Insurance Partner

Risk Management Defined

“The process of planning, organizing, leading and controlling the activities of an organization in order to minimize the adverse effects of accidental losses on that organization at a reasonable cost.”

Essentials of the Risk Management Process

ARM 54 Text

Insurance Institute of America

The Evolution of Risk Management

From PRIMA

1978

- Insurance Procurement
- Policy Admin.

1988

- Risk Financing
- Loss Control
- Organizational RM Focus
- Claims Mgmt.
- Regulatory Compliance
- Public Safety RM
- Employee Benefits

1998

- Risk Financing
- Cost Allocation
- Loss Control
- Contractual Risk Transfer
- Claims/Litigation Management
- Outcome Orientation & Benchmarking
- Integrated Disability Mgmt.

2008

- Chief Risk Officer
- Enterprise RM
- Consultancy
- Risk Financing
- Multi-Jurisdictional Integration
- Loss Control
- Claims/Litigation Mgmt.
- Cost Allocation
- Bus./Gov't.
- Partnerships

Alignment of the Risk Management Functions within an Organization

Superintendent's Office

Finance/Business Office

Human Resource Office

General Counsel/Legal Office

Major Risks Common in Property/Liability Programs (Third Party Losses)

- Premise operations or products that result in bodily injury or property damage (General Liability Coverage)
- Errors and omissions that result in personal injury and violation of civil rights (Educators' Legal/Professional Liability Coverage)
- Auto use, owned and non-owned, that results in bodily injury or property damage (Automobile Liability Coverage)

Major Risks Common in Property/Liability Programs (First Party Losses)

- ❑ Building & content loss due to fire, theft, vandalism, and other perils
- ❑ Builder's Risk for property under construction/improvement
- ❑ Boiler and machinery loss due to fire, explosion, breakdown in machinery and other perils
- ❑ Computer and other electronic data processing equipment loss
- ❑ Internal embezzlement and employee crime loss
- ❑ Automobile/Bus Physical Damage

School Premises Liability



Premise Liability Exposures

Ways to Get Sued

- Failure to inspect
- Failure to maintain
- Failure to supervise
- Dangerous condition
- Failure to have sound policies
- Failure to follow policies

Negligence



- Negligence is the breach of a duty owed to someone to protect him or her from unreasonable risks of harm

Mitigating Premise Liability

Safety Before All Else

- Every employee is responsible for safety (it's a mindset)
- Campus security, it's paramount
 - (fingerprinting, employee ID, centralized visitor ID, security lighting, emergency preparedness, SEMS/plan)
- 911 response
- Mandated abuse reporting
- Procedure to timely report and abate hazards
- Know & follow policies/procedures
- Practice, practice, practice



What Went Wrong?

*Science Experiment Explosion (\$10 million)

Use of methanol gas to conduct canister experiment with tennis balls. Colorless gas chemical explodes causing third degree burns.

Failure to supervise

*Waiting to call 911 (\$1.15 million)

Student had seizure on the playground. Nurse was called, parent was called, vice principal was called.

Failure to have sound policy

Errors & Omission Liability

School board members, administrators, and teachers are typically protected by their district's insurance/legal resources. However, all can be sued for professional and personal liability.



Errors & Omissions Liability

(School Board Legal/Professional Liability)

Ways to Get Sued

- Violation of civil rights, including discrimination, ADA, and harassment
- False arrest, detention, imprisonment or malicious prosecution
- Slander and libel
- Failure to provide due process
- Breach of privacy rights
- Retaliation - whistle blower
- Failure to educate (emerging IEP claims)
- Exposure to plaintiff's attorney's fees ("fees case")

Mitigating Liability for Breach of Civil Liberties

Hire the best and most qualified

Adhere to concise policies and procedures

Train and coach (continuous efforts)

Maximize avenues for communications

Immediate and consistent response to complaints

Discipline and expel/discharge concisely



What Went Wrong?

*Child Molestation With A Twist (\$6.75 million)

Six students ages ranged from 10 - 11 years old

(Randi W. vs. Muroc Joint Unified School District (1997; “pass the trash” case law that expose defendants to liability))

Failure to adhere to policies and procedures

*Failure To Educate (\$6.7 million)

Autistic student was not provide proper educational assistance following failure of district to comply with SEHO hearing and other state mandates.

Failure to provide due process and discrimination



Automobile Liability Exposure

Use of District-owned Vehicles

- Coverage follows the vehicle
- Permissive-use is broadly interpreted under the law
- 15 Passenger vans (AB 626 prohibits use for K-12 student transportation regardless of how many seats you remove)
- Coverage for rental and leased vehicles

Use of Personal Vehicle for District-related Business

- Coming and going rule
- Registered owner's vehicle is primary (California Insurance Code)
- How coverage applies to rentals

Liability Exposure in Transporting Students

- Teachers driving students
- Students driving students
- Non-student passengers
- Ill or injured students

Mitigating Automobile Liability Risks

- ← Clearly define the district's responsibility for transportation
- ← If District transportation is provided; consider mandatory use
- ← DMV and insurance checks for all drivers
- ← Do not organize drivers or caravan if the school is not responsible for transportation
- ← Use transportation waivers when considering exceptions (non-student participants and field trip deviations)



What Went Wrong?

*District Vehicular Accident (\$13.5 million)

Employee in early morning drive between school sites hits two brothers in a crosswalk, killing one and causing brain damage to the other. Mother who is walking with them is pinned to the car and loses one leg.

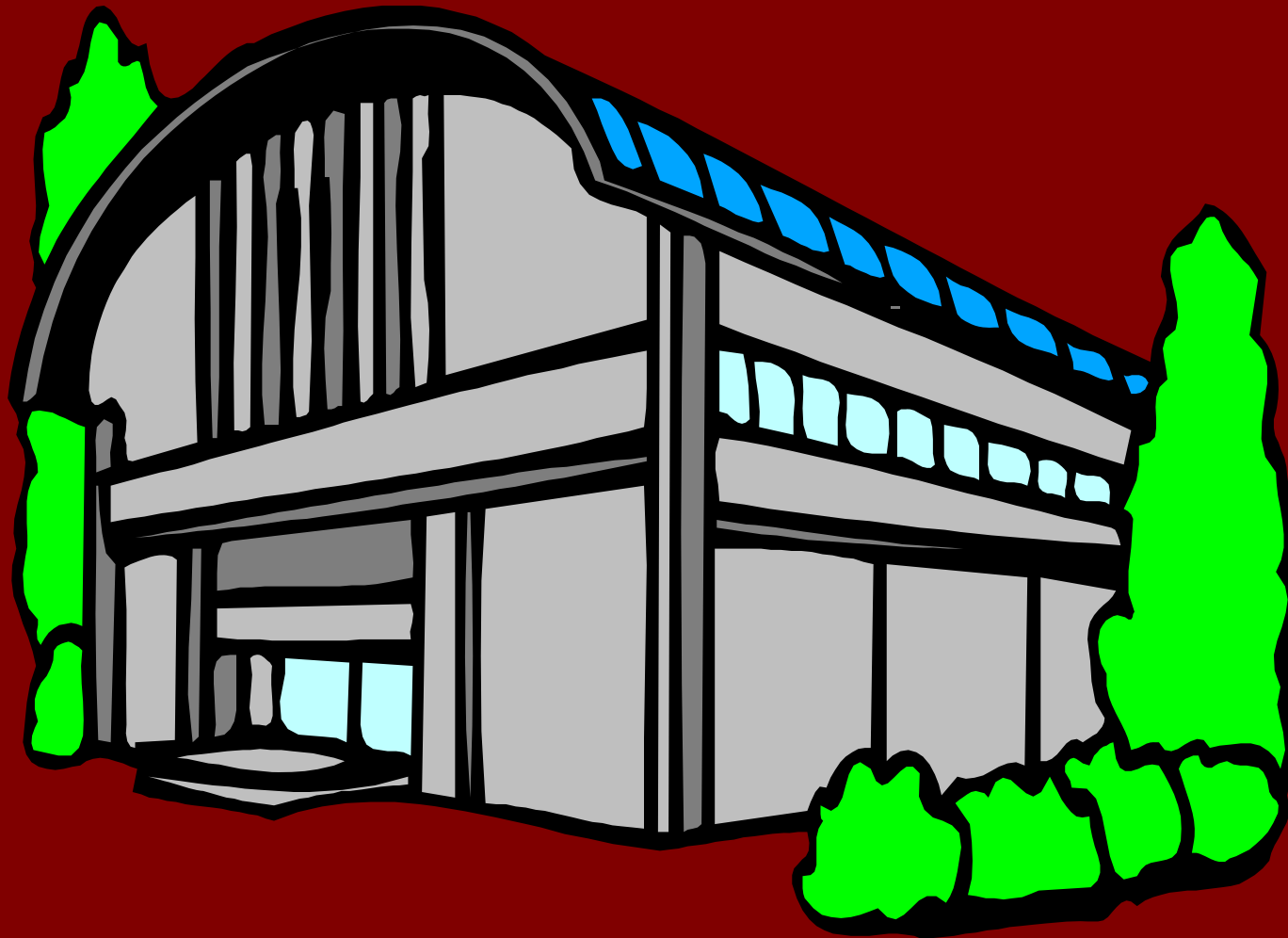
Failure to yield the right of way

*District Bus Accident (\$11.7 million)

Bus driver fails to secure student in wheelchair resulting in neck injury when wheelchair overturned.

Failure to properly secure disabled passenger

Building and Contents Loss



Typical First Party Losses

- Fire that damages/destroys building
- Water damage loss
- Smoke damage from wildfires
- Theft and vandalism/graffiti
- Extra expense loss

Other Common First Party Losses

- Boiler and Machinery losses
- Property damaged under construction (Builder's Risk)
- Computer and other electronic data processing equipment loss
- Employee embezzlement and theft

Mitigating First Party Property Losses

Facilities

- Regular inspection of facilities and equipment
- Proper fitting, training, use, and maintenance of equipment
- Housekeeping
- Schedule testing of fire safety equipment
- Regular and spot audits of internal controls



What Went Wrong?

*Fire Loss to Building/Contents (\$4.2 Million)

School janitor left oil rags near furnace causing a building fire.

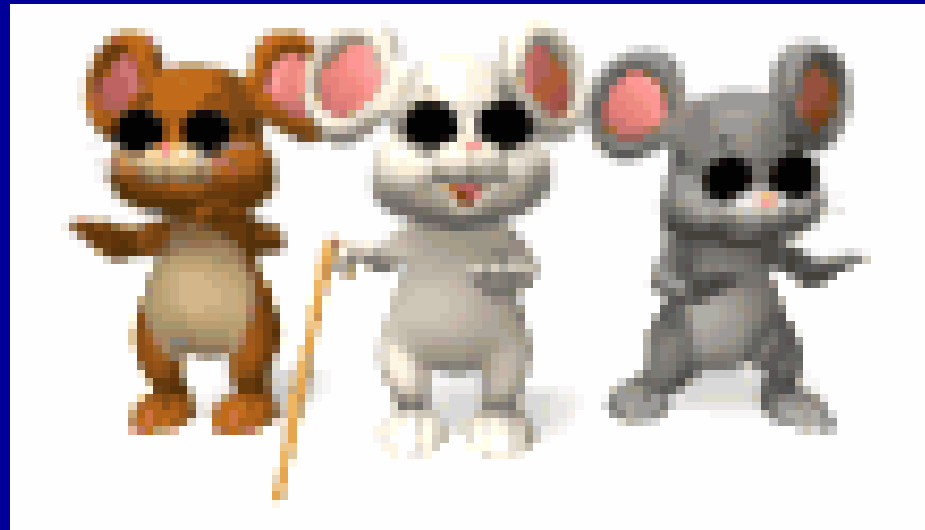
*Water Loss to Building/Contents (\$1.87 Million)

School maintenance worker opened water value main to the street which had been closed due to road construction. When City resumed service, the school was flood over the weekend.

*Smoke Damage to Building (\$? Millions)

Schools suffered heavy smoke and soot damage as a result of on-going wildfires.

What are the primary differences between third party and first party insurance coverages?



Methods for Identifying/Analyzing Loss Exposures

- ❑ Surveys and Questionnaires
- ❑ Loss History and Trends in Claims Reports
- ❑ Financial Statements and Accounting Records
- ❑ Other Records and Documents
- ❑ Personal Inspections
- ❑ Contracts
- ❑ Expertise Within and Beyond the Organization



Three Broad Categories to Address Risks

Risk Avoidance

Risk Control

Risk Transfer

Risk Avoidance

“Just Say No”

PRO

- Assurance No Loss Will Occur
- Financial Impact Likely Neutral

CON

- Low Risk Taker May Mean Low-Innovation
- May Be Viewed as an Alarmist
- May Intentionally Be Left Out of Loop
- May Not Have Job for Long

Risk Control Techniques

- Loss Prevention
- Loss Reduction
- Segregation of Loss Exposures
- Contractual Transfer of Risk

Loss Prevention, Reduction & Segregation

- **Loss Prevention:**
Aims to reduce the frequency (or the likelihood) of a particular loss
- **Loss Reduction:**
Aims to lower the severity of a particular loss
- **Segregation of Loss Exposure:**
Aims to reduce the likelihood that no single event can cause simultaneous losses

Risk Transfer Strategies

- Transfer legal liability by contract to others through insurance and indemnification/hold harmless
- Use fieldtrip and other student waiver forms
- Use facility-use agreement waivers
- Transfer sponsorship of activities to third party

Safety, Its The Law

- ❑ Prioritize and Set Safety Goals which are Practical, Workable, and Enforceable
- ❑ Assign and Delegate Responsibilities for Specific Program Segments to Specific Individuals
- ❑ Link Safety Performance to Compensation and Promotion
- ❑ Incorporate Safety in New Employee Orientation
- ❑ Enforce and Promote Safety on the Job at All Times
- ❑ Personal Civil and Criminal Liability

How Accidents Impact the Whole Organization

- Increase insurance costs, less money for education
- Loss of personnel/productivity to injuries and accidents
- Increase in costs and training for replacement personnel
- Reduced morale when employees are distracted with claims/litigation issues
- Loss of creativity and risk taking
- Loss of school district reputation and public trust

What Went Wrong?

*Failure To Report Potential Child Abuse/Molestation

Principal conducts investigation and interviews alleged victim/student and does not report to child protective agency. DA's office investigates for criminal misconduct.

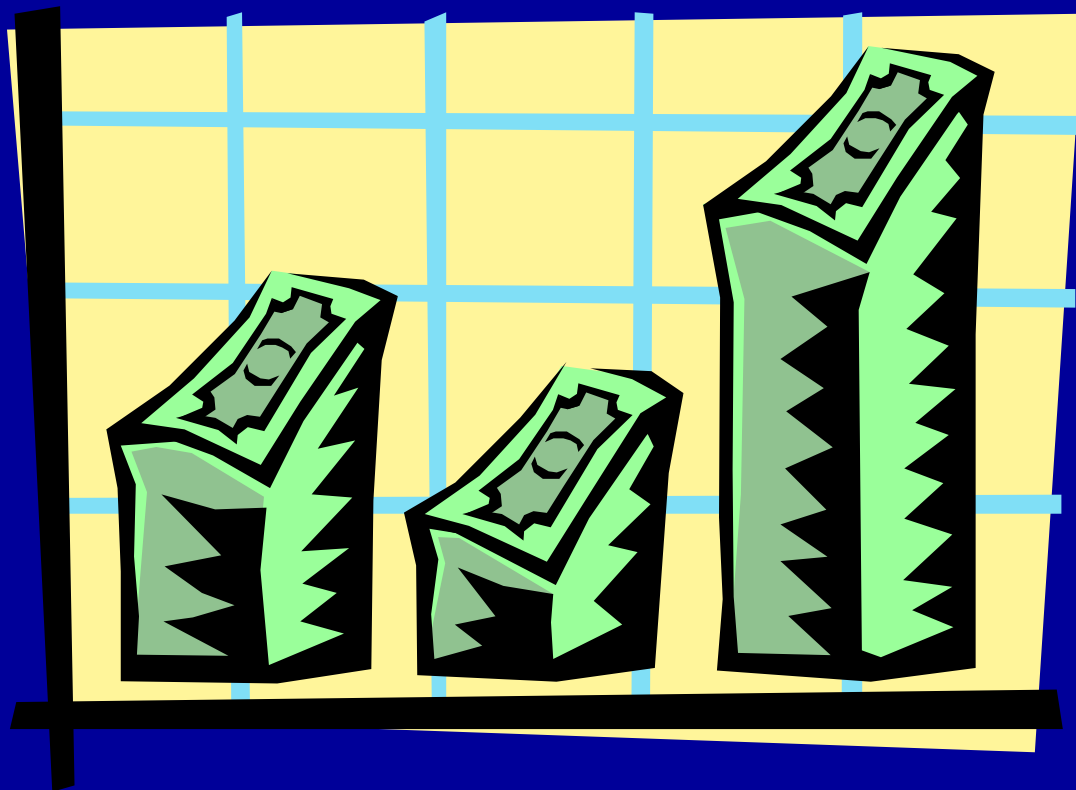
*Failure To Provide Protective Gear/Respiratory Training

Maintenance supervisor is investigated for criminal misconduct when employee is overcome by fumes in cleaning an underground swimming pool sump tank and Cal OSHA is alerted by an anonymous caller of a willful safety violation.

Who should be responsible for safety and loss control within an organization?



Risk Financing Options



Risk Financing Techniques

(Transfer Vs Retention)

- Risk Transfer to Insurance Carrier (potentially the highest costs with lowest financial risks)
- Risk Transfer to a Risk Retention Pool
- Self-Insured Retention (SIR) on a Primary Basis with Excess Risk Transferred to a Carrier or Pool
- Purposeful and Complete Risk Retention (potentially lowest costs with highest financial risks)
- Head in Sand Risk Retention (potentially the highest political costs with the highest financial risks)

Risk Transfer to Carrier (Buy Insurance)

PRO

- Costs are Fixed Each Coverage Year
- Defined Losses are Insured
- Carrier Will Make Whole

CON

- Premium Dictated by Market Flux
- Costs Include High Profit and Overhead
- Limitation on How Claims are Handled
- Coverage Disputes May Occur
- Carrier Bankruptcy

Self-Insured Retention with Excess Risk Transferred

PRO

- Predictable Losses are Self-funded Without Overhead Costs
- Control of Initial Claims Handling
- Finances are Partially Kept in Organization

CON

- Costs of Losses May Vary Widely From Year to Year
- Claims Management Added Tasks
- Retained Losses May Not be Adequately Funded
- Organization May Rob Excess Reserves

Risk Transfer to a Risk Retention Pool

PRO

- Costs are More Stable Each Coverage Year
- Defined Losses are Insured
- Pool Will Make Whole
- Risk Share with Like Entities
- Surplus Rebates Available

CON

- Greater Losses Above Funding Level May Result in Assessments
- Membership Constraints
- Coverage Disputes

Purposeful and Complete Risk-Retention

PRO

- All Losses are Self-funded Without Overhead Costs
- Full Control Claims Handling
- Finances are Kept in Organization
- Greater Focus on Loss Control

CON

- Costs of Losses May Vary Widely From Year to Year
- Added Staffing in Claims and Loss Control
- Losses May Not be Adequately Funded
- Catastrophic Losses May Bankrupt Organization

Blind Risk-Retention



PRO

- What They Don't Know Won't Hurt Them...
(as long as no losses occur that hit their radar screen)

CON

- If They Don't Like Surprises, You May Be Looking for New Employment
- Catastrophic Losses May Bankrupt Organization

Steps to Evaluating Risk Retention Options

1. Review historical loss runs
2. Conduct actuarial study to evaluate financial risk at various retained levels
3. Compare costs to transfer risk
4. Know the culture of your district to fund losses and not rob reserves
5. Staff commitment to manage exposure and mitigate losses in the retained limits
6. Appetite for risks and a good nights sleep

What are some factors that should be considered when determining what risk financing option is best for an organization?



When Something Bad Happens at a Good School

- Report losses Immediately
- Secure property, evidence, and witnesses
- Centralize communication
- Control media response
- Fact-finding, not fault-finding
- Let the loss be a learning tool
- Teach and tell

Claims and Litigation Management (Pre-Litigation)

- Establish a Claims Handling Philosophy
- Claims Investigation (With Purpose)
Prompt and Thorough Investigation
Investigate to Determine Liability and Stop Occurrences
- Claims Evaluation (Take Realistic Approach)
Evaluation Should be On-going

Claims and Litigation Management (Pre-Litigation Continued)

- Claims Negotiation (Conduct With Integrity)
 - Know All the Facts
 - Anticipate All the Arguments
 - Make the First Offer
 - Make a “Fair” Offer
- Claims Settlement
 - Obtain and Provide Prompt Settlement Authority
- Financial Audit
 - Indemnity and Expense Reserving
 - Claims Administrator Billings
 - Loss Run Financial Accuracy

Claims and Litigation Management (Post-Litigation)

- Discovery Process (With Purpose)
 - Establish Litigation and Trial Theme
 - Effective Use of Interrogatories and Depositions
 - File Law and Motion When Appropriate

- Claims Evaluation (Take a Realistic Approach)
 - Evaluation That is On-going Based on Discovery
 - Watch Out for the “Good News” Syndrome
 - Keep Supervisor and Board Apprised
 - Consider Costs of Defense
 - Consider Probability of Favorable Trial Outcome
 - Consider Personnel Time and Costs

Claims and Litigation Management (Post-Litigation Continued)

- Claims Resolution
 - Political Fallout of Settlement or Judgement

- Financial Audit
 - Indemnity and Expense Reserving
 - Attorneys Stayed Within Budget
 - Services Paid Have Been Satisfactorily Provided
 - Loss Run Financial Accuracy

What are some key aspects of claims handling that can help to reduce the overall cost for an organization?



Picking the Right Insurance and Risk Management Partner

- Breadth of Coverage
- Targeted and Quality Services
- Ensure You Get What You Paid For...and More
- Know the True Costs of Your Insurance Programs
- Maximizing the Value of a True Partnership

Breadth of Coverage (General Liability Risks)

- **Additional Exposures (are you covered?)**

Personal Injury Liability Coverage

Student to Student Sexual Harassment

Slander/Libel

Handicap Facility Access

Employment Practices Liability Coverage

Wrongful Termination

ADA/Age/Sex/Race Discrimination

Civil Rights and Due Process Violations

Sexual Harassment & Hostile Work Environment

Breadth of Coverage (General Liability Risks)

- **Additional Exposures on the 2008 Horizon
(are you covered?)**

Cyber Risks

Privacy and 1st Amendment Rights

Separation of Church and State

Concurrent Enrollment Liability

Sports Recruitment Violation

Terrorism

Breadth of Coverage (Property Risks)

- **Additional Exposures (are you covered?)**

Course of Construction (Partially-constructed building loss)

Rental Interruption (COPS and TRANS)

Food Spoilage

Replacement Costs Valuation (Building or policy limits)

First Right on Subrogation (Policyholder or insurer)

Targeted Program Services

- **Safety and Loss Control Tools**

Property Appraisals

Cyber Risk Assessment

Hazardous Material Abatement

Indoor Air Quality Management

Asbestos and Lead Contamination

Blood Borne Pathogens

Regulatory Compliance

SB 198 Compliance

EMF Assessment

Workplace Ergonomics

We-Tip/We Tell Services

Safety Inspections

Safety Training

Security Consulting

OSHA Citations

Return to Work

MSDS Compliance

DMV Pull Notices

On-line Training



Targeted Program Services (cont'd)

- **Risk Management Tools**

(Are suggestions provided with an education perspective?)

Contract Review for Insurance Requirements

Negotiate Risk Transfer and Indemnification Issues

Risk Assessment of Creative Activities and Programs

Certificates of Coverage and Endorsement

Coverage Review of Educational Services

General Sounding Board for Ideas and Programs

Customized/Designed Student Fieldtrip Waivers

Customized/Designed Athletic and Sports Waivers

Facility-use Agreements

Targeted Program Services (cont'd)

- **Claims and Litigation Management**

Claims Administration

Claims Settlement Philosophy

(Is everyone on board?)

Legal Counsel

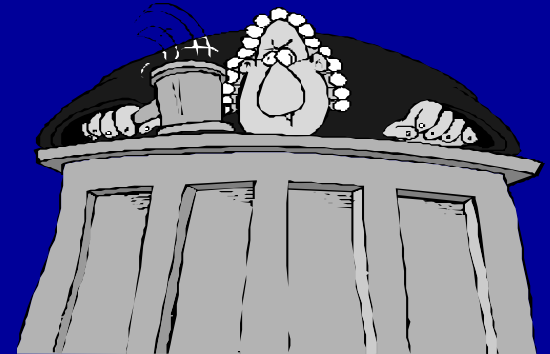
(Law clerk to senior partner)

Legal Cost Containment

Managing Reserves

(Below and Above SIR)

Claims/Legal Audits



Targeted Program Services (cont'd)

- **Which services did you or will you have to pay for?**
- **Which services will you forego due to costs?**

Spread the Service Plan

- ∪ Clear and concise scope of work
- ∪ In writing
- ∪ How costs will be handled
- ∪ Distribute and communicate services to targeted personnel



Who Can be Responsible for and Benefit from Services?



Quality of Service Delivery

- **Responsiveness**

Accuracy

Timeliness



- **Staff Support**

(Enhances or Hinders Organization's Image)

- **Political Knowledge and Sensitivity**



Does Your Partner Know What the Next Big Challenges are that Schools will Face?



Owner-Controlled Insurance Program OCIP

Objectives

- Safe Project
- Timely Completion
- Broad, Extensive Coverage
- Relief of Administrative Overload
- Reduction of Cross-Litigation Potential
- Cost Savings



Labor Compliance Program

- Law shifts burden of enforcement of Labor Code from State to educational agencies wishing to qualify for specified construction bond funding
- Entities undertaking such projects must have a Labor Compliance Program
- Feeding frenzy of law firms
- Opportunity for JPA to develop a Model Compliance Plan to provide to members free of charge and to create a pre-screened vendor panel
- Frees funds to be used for educational purposes



Disaster Mitigation Act (DMA) 2000

An Opportunity to Assist Members

- Develop “How to Create a Hazard Mitigation Plan” manual for members.
- Provide workshops to targeted school employees.
- Pre-qualify vendor to provide advisory services.
- Provide services as a part of the basic loss control budget, without additional charge, thus addressing a common problem among schools.



Cyber Risk Assessments

- Exposures
 - Hacker's access
 - Breach of confidentiality
 - Health information
 - Financial aid data
 - Police reports
 - Psych files
 - Medical files
 - Business interruption
 - Physical security
 - Loss of computer data



Sexual Harassment Training

- AB 1825 - requires ongoing training of “supervisors” as of January 2006
 - 50 or more employees
 - Very broad definition of “supervisor”
- Requires on-going training
- Training must be “interactive”
- Flood of letters from legal firms--containing questionable assertions



GASB 43 & 45

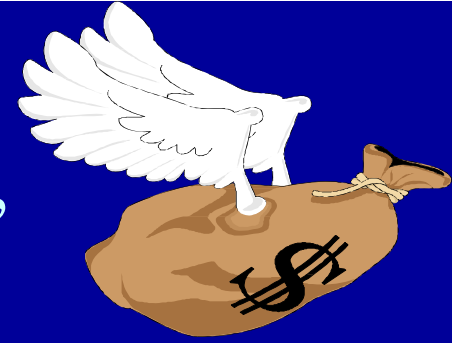
Financial Reporting for Post Employment Benefits Plans

- Reporting outstanding future liabilities for retiree health benefits
- Actuarial study required
- December, 2006 Implementation
 - \$100,000,000+ budgets
- 2007
 - \$10,000,000-\$100,000,000
- 2008
 - Less than \$10,000,000



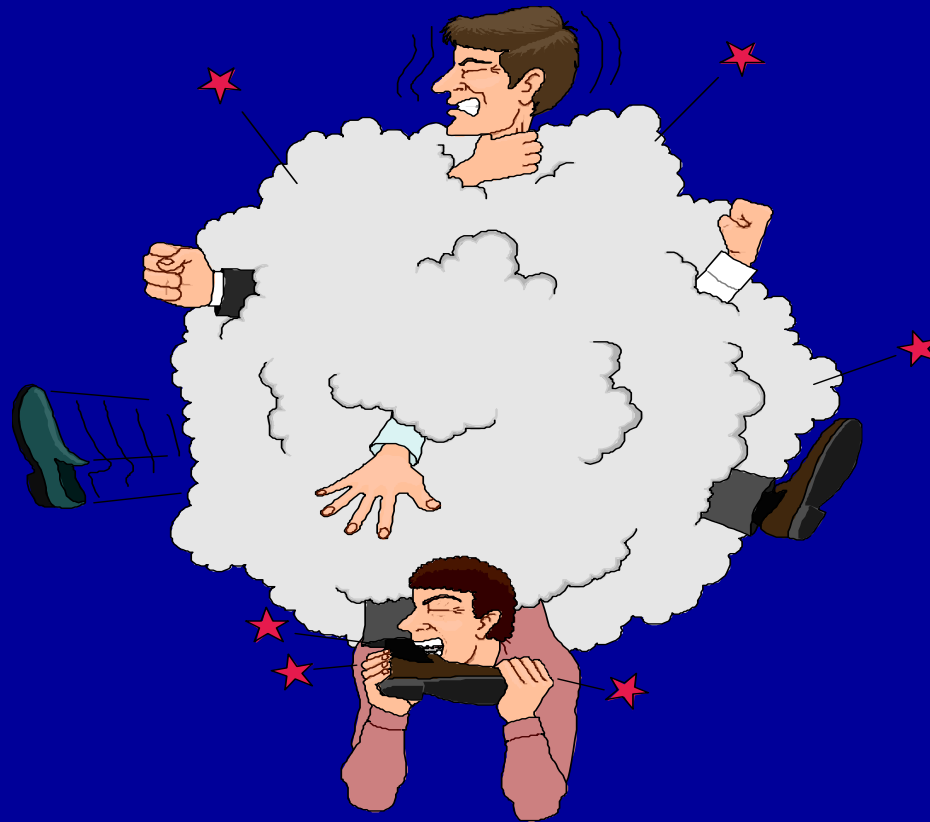
Comparing Program Costs

“Evaluating the Bottom Line”



- Compare costs for coverage breadth and limits and project costs for non-covered or reduce-covered risk
- Evaluate costs for non-covered or coverage disputed claims and the legal costs associated with dispute resolution
- Compare costs for services and those services you will do without because of budgetary constraints
- Evaluate expenses for services requested that you thought were included but had to pay for
- Compare program rebate/assessment trends (on and off the books)
- Identify the primary benefactor(s) of cost savings in your insurance programs

Competition is Fierce
Make sure your partner is fighting for you!



In Summary...The Golden Rules

- *Retain* every insurance policy for life
- *Report* every claim regardless of how minor or whether you believe there is coverage
- *Review* and update policies to adhere to legal requirements
- *Remind* employees/volunteers to implement policies and procedures consistently
- *Remember* that “course and scope,” activities are required for coverage to be valid
- *Resolve* to share your good ideas with others

Partnership for Success

Creatively working together

Always looking out for each other

Staying loyal to your partners during good/tough times

Believing we can make a difference together

Orienting towards excellence

