

The governing board of a school or community college district or charter school is charged with the protection of taxpayers' investment and promoting the safety of students, staff, and the public. A comprehensive program for assessing and managing risk and protecting the assets of a school district is essential. References in this section to school districts include independent charter schools.

Those responsible for the administration of a district risk management program should expand their study of risk management practices beyond the treatment in this section. Additional Information is available through professional risk management organizations and from the San Diego County Schools Risk Management JPA (see Additional Resources).

EVALUATION

Because the governing board must protect against risk, a designated district employee should be trained in the principles of risk management, including loss control and evaluation of insurance coverage. The district risk manager, business manager, or other designated employee should be responsible for identifying insurable risks, acceptable retained risks, and acceptable self-insured retentions or deductibles.

Knowledge of self-insurance or insurance coverage that is in place will ensure that districts are protected against loss, benefits are appropriately utilized, and recovery is maximized if there is a loss. The potential savings to the district of proper transfer of risk and active loss control could cover the annual salary of an employee assigned to oversee a risk management program.

A review and analysis of self-insurance or insurance coverage should be conducted at least annually to ensure that coverage is both comprehensive and economical. For example, while assets will be lost if fire insurance is not sufficient to cover losses, maintaining too much insurance results in an unnecessary expense. As new laws are enacted, superseding conditions may make some coverage unnecessary or require additional coverage. An annual review and assessment four months in advance of the anniversary date of existing coverage is recommended. An understanding of current and anticipated requirements for coverage will ensure the accuracy of the insurance costs that must be included in the annual budget.

LEGAL PROVISIONS

The governing board must insure school property against fire. [EC § 17565] Property losses from other perils may be covered by property floaters, (e.g., burglary, robbery, theft, malicious mischief and vandalism, boiler, glass, forgery, electrical injury) or special risks insurance according to the needs of the district (e.g., fine arts, exhibitions, garage keepers' liability, electronic data processing).

The governing board may by resolution establish fund(s) for losses, including but not limited to property, liability, and workers' compensation. The district shall budget what it judges to be sufficient funds to provide for deductible amounts, self-insured retentions under insurance policies, or losses due to uninsured perils. The county superintendent of schools may participate in or administer insurance or self-insurance programs for itself or one or more districts. [EC § 1274; GC § 6500 et seq.]

The governing board shall secure bond (fidelity, commercial crime) coverage for each employee handling district funds. The board may secure fidelity coverage for employees who handle district property. [EC § 41021]

Fidelity coverage must be obtained for the custodian of a revolving cash fund in an amount at least equal to twice the amount of the revolving cash fund. This coverage may be included in the employee's fidelity coverage. [EC §§ 42801-3]

The governing board shall insure against liability of the district and personal liability of officers and employees. The insurance shall be for death or injury to persons, or damage to property as the result of any negligent act or omission of the district, a board member, other officer, or employee when acting within the scope of office or employment. Coverage may be provided through participation in a joint powers authority (JPA), such as the San Diego County Schools Risk Management JPA, or through commercial insurance carriers. [20 USC §§ 6731-8; EC §§ 35208, 35214, 72506]

The governing board may provide for workers' compensation insurance for employees in one of the following ways:

1. Insurance through the State Compensation Insurance Fund (SCIF) with an individual district policy. [IC § 11870]
2. Inclusion in an SCIF policy with other districts within the county. [EC § 1252]
3. Self-insurance or insurance through a commercial carrier as an individual district or within a joint powers authority such as the San Diego County Schools Risk Management JPA. [LC § 3700]
4. Insurance through a commercial carrier as an individual district or with other districts under a group policy. [IC § 11656.6]

The governing board may provide any health and welfare benefits for its officers, employees, retired employees, and specified retired officers who desire such plans and who authorize payroll deductions to meet plan costs. [GC § 53201] The governing

board may authorize payment from district funds of a portion or the full amount of premiums for health and welfare benefits. [GC § 53205]

The governing board may provide district officers, deputies, assistants, agents, and employees with insurance for injury or death incurred while traveling on district business.

The governing board may provide pupil accident insurance for all pupils while on school premises by reason of attendance on a regular school day or while being transported by the district to or from school or school-sponsored activities. The cost of the insurance may be paid by the district or by the pupil, parent, or guardian. [EC §§ 35331, 49472]

The governing board shall provide each member of an athletic team with insurance protection for medical and hospital expenses resulting from accidental injury. The costs of such insurance may be paid out of district funds, student body funds, or by any other persons. The insurers and the coverage must meet specified requirements. [EC § 32221-4]

The governing board of a district having courses in driver education and automobile driver training may insure against any liability arising out of the use of motor vehicles in connection with course work. The cost of such insurance shall be paid from available district funds. [EC § 35211]

GENERAL INSURANCE PRACTICES

Placing Insurance

Administrative guidelines should be established in accordance with board policy to ensure that funds are prudently expended to secure insurance coverage. A request for proposals (RFP) may be used by a district since competitive bidding is not legally required. [GC § 53060] An RFP permits the district to award a contract based upon its determination of the best quality, services, functions, and any other relevant consideration for the price.

The district's risk manager, business manager, or other designated employee or broker should prepare complete specifications of the insurance coverage desired if bids are requested. If purchasing insurance from a commercial carrier, it is important to require in the specifications a BEST Insurance Guide Rating of not less than A-VII.

Brokers may be compensated by a negotiated fee for services rather than by commission. Periodic RFPs for brokers will assure the district of a thorough search of the market, more responsive brokers, and lower insurance premiums.

Risk Pool

An innovative financing option available to districts is a risk pool. Most school districts in San Diego County participate in the San Diego County Schools Risk Management Joint Powers Authority (JPA). Programs available through the JPA include:

1. General liability/wrongful acts/employment practices liability
2. Auto liability
3. Property insurance (fire, etc.)
4. Property floaters (boiler and machinery, automobile physical damage, etc.)
5. Workers' compensation
6. Employee fringe benefits (health, dental, etc.)
7. Owner Controlled Insurance Program (OCIP)
8. Electronic Data Processing (EDP)

Pool participation provides significant economies of scale and coordinated claims/legal administration, as well as uniform claims processing and access to loss information for risk analysis and planning purposes.

Coinsurance

A coinsurance clause is also known as an average clause or a reduced rate contribution clause. It is one of the most frequently used methods for reducing fire insurance premiums, as well as other property premiums. The district becomes the coinsurer with the insurance company for that percentage of insurance that is not covered under this type of clause. In cases of partial loss, the insurance company pays its proportionate share up to the face value of the policy.

Flat Rate

A flat insurance rate is not based on any assumed amount of insurance in relation to the value of the property. It is an alternative to the coinsurance rate. Losses are paid in full up to the amount of the insurance, regardless of whether the insurance amount is close to full value.

Endorsements

Endorsements are used to modify coverage in a specific policy. For example, an additional insured endorsement extends coverage of an existing insurance policy to another party. Manuscript insurance policies may be written to cover large accounts and can be tailored to an insured's coverage requirements.

Tort Claims

The California Tort Claims Act allows the public to bring certain types of claims against state and local entities and sets out the procedures to be followed when filing a claim. [GC §§ 810-996.6] Lawsuits for money damages may be brought against a public entity but may be dismissed for failure to submit a written claim for damages.

Government Code section 910.4 requires public entities to make available a standardized form for claimants to submit tort claims to districts. The standard claim form must include the information specified in Government Code sections 910 and 910.2. Districts may consider written claims that are not submitted on the standardized claim form as long as they comply substantially with the requirements of these code sections. A sample tort claim form and cover letter for mailing the form to a claimant are provided as Exhibit 1 and are also available online (see Additional Resources).

Use of Facilities and Grounds

Under the Civic Center Act, groups, organizations, or persons using school facilities or grounds are liable for any property damages caused by the activity. The Board may charge users the amount necessary to repair the damages and may deny further requests for use of school facilities or grounds. Additionally, any group or organization using school facilities or grounds is liable for any injuries resulting from its negligence during the use of district facilities or grounds. The group shall bear the cost of insuring against this risk and defending itself against claims arising from this risk. [EC §§ 38130-8]

According to the California Department of Education, a district can require a group or organization to provide evidence of insurance against claims arising out of its own negligence. A district can also require a group or organization to name the district as an additional insured on their liability policies for claims arising out of the negligence of the group.

Other Recommended Practices

The district risk manager, business manager, or other designated employee, or a broker should submit an annual insurance coverage report to the district superintendent specifying all coverages in effect. It is preferable to prepare the report early in the school year, on September 1, for example. The annual report is submitted to the governing board as evidence of approved insurance programs. Many San Diego school districts use the JPA Annual Insurance Summary to report coverage to their superintendents and governing boards.

A summary insurance policy record or database including information such as the insurer, broker, policy number, date of expiration, policy term, coverage amount, coverage description, and premium should be maintained and kept in a secure place. Insurance policies or Memoranda of Coverage (MOC) should be stored in a fireproof location and retained in perpetuity.

A district's loss experience affects pool contributions and insurance rates. Business procedures should be designed to keep losses to a minimum. Effective cash control and inventory control practices may reduce losses by theft. Adequate accounting records should be maintained as the basis for detecting losses and supporting claims. Particular attention should be paid to records relating to fixed assets, inventory, and cash control.

An assertive safety program, with emphasis on employee training and workplace inspections, controls losses. The JPA or insurance carrier will assist districts in developing loss control programs.

The JPA or broker, as appropriate, should be promptly notified upon the acquisition or disposal of real property or automobile units. Failure to report newly acquired, occupied owned buildings or remodeled facilities with increased square footage may result in coverage denial. Notice should be given when new programs commence and when events affecting the insurance program occur.

Insurance policies may be written for multiple-year terms to reduce administrative time and expense. Multi-year policies generally provide for consistent pricing, terms, and conditions.

To prevent a renewal date from being overlooked, many districts set the expiration date of all policies at June 30 of each school year.

PROPERTY INSURANCE

Appraisal

A reliable property appraisal that determines insurable values is necessary before a property insurance program can be planned. The appraisal data serves as the basis for the establishment of permanent property records of fixed assets. A designated administrative employee should be responsible for obtaining the initial appraisal and, absent an appraisal-updating program, should arrange for appraisal updates at least once every three years. Cost proposals for professional assistance from appraisal firms should be submitted to the governing board for approval.

The initial appraisal should consist of a complete valuation of insurable property, including a valuation of land, as well as buildings and equipment. Architects' fees for supervision should be included in coverage, as these services would be necessary for facility repair. Insurable property generally does not include the costs of site work, footings, or incidental construction costs.

Policy Form

All property insurance policies should be written for special form perils to provide broad coverage. Coverage should be written on a replacement cost valuation basis, and the values insured should reflect the actual replacement cost of the property with no deduction for depreciation. Whenever possible, coinsurance should be eliminated and replaced with an agreed policy amount or no coinsurance to avoid the possibility of a loss penalty for underinsurance.

Property insurance policies cover direct physical loss or damage to property except when specifically excluded. Fire, water damage resulting from an accident, vandalism and malicious mischief protection are generally included in the standard policy. Coverage usually includes windstorms, hail, explosions other than a steam boiler, riots, aircraft, and smoke. Increased cost of construction, code upgrades, and demolition costs are generally included in the standard policy with specific limitations. Regulations of the State Fire Marshal, as presented in Title 19, California Code of Regulations, call for sprinkler systems in specified areas of school buildings. A property insurance policy should include sprinkler leakage coverage.

Commercial property insurance is available to cover loss by fire, theft, or vandalism of property of high value that is easily stolen, such as cameras, movie projectors, radios, etc. Mysterious disappearance is generally an excluded peril. The cost of this protection is high. Duplication by coverage under fire insurance policies should be avoided.

Property insurance policies generally do not insure against loss due to earthquake or flood. These perils must be separately insured if coverage is required.

The period covered by a property policy should be governed by the market condition. A commitment of three years is not unusual. There is legal authorization for policies of up to five years.

Property insurance can be obtained through an insurance broker or a pool such as the San Diego Schools Risk Management JPA or other JPA.

Replacement Basis

Under property insurance policies written on a replacement basis, if a loss occurs, the facility is replaced with no offset for depreciation. The district will receive "new" for "old," unlike policies that provide only actual cash value. The district must base its insurable values on the replacement cost of the structures.

Loss Adjustment

Legal complications may develop through conflicting interpretations of coverage when a serious property loss has occurred. Should this problem arise, the district's insurance broker and, if necessary, legal counsel should be notified in order to protect the best interests of the district.

SPECIAL RISKS INSURANCE

A district may obtain special risk policies covering hazards such as earthquake or flood damage, which are not normally provided under a customary property form, or for other special needs, such as coverage of fine arts displays or exhibitions. It is important to measure the cost of a special risk policy against the cost of including the risks in another type of policy to which an endorsement might be added. For example, water damage may be covered in the malicious mischief and vandalism policy, but a special risk policy might be a better investment if water damage is considered to be the only real hazard that might result from an illegal entry to school property.

FIDELITY, COMMERCIAL CRIME, AND BLANKET BOND INSURANCE

Blanket Coverage

A blanket commercial crime policy insures the district against loss resulting from dishonest, fraudulent acts and theft of money and securities committed by its employees. Blanket commercial crime insurance offers one of the best coverages available for loss of district funds. It provides protection against all losses on the district

premises caused by destruction, disappearance, and wrongful extraction. The district is completely safeguarded up to the limits of the policy against a loss caused by any employee.

Commercial crime insurance covers all persons employed at the time the policy is issued as well as all new employees. It provides a uniform amount of coverage on each employee separately, or for a group of employees acting in collusion. Coverage can also be carried on specified responsible individuals. Many larger districts use this option to cover employees who handle money or securities. Coverage may be written with separate policy limits on an individual employee loss or a blanket limit for two or more employees. Coverage for money losses by messengers off school property and losses on school property should be included when contracting for this insurance. [EC § 41021]

Members of the San Diego County Schools Risk Management (JPA) have a \$1,000,000 blanket limit covering all district employees.

Revolving Cash Fund Coverage

If a separate policy is obtained for the custodian of a revolving cash fund, the amount of the policy must be twice the amount of the revolving cash fund; however, it may be more cost effective to have such coverage included in a blanket policy as discussed above. [EC §§ 42801-2]

Other Insurance Options

Safe burglary insurance provides protection against loss of money, securities, and other property inside a locked safe or vault. Safe burglary insurance is generally included in a commercial crime policy. Coverage requires visible marks of forcible entry on the exterior portion of the safe or vault.

Proof of Loss

To prove the amount of any commercial crime or loss, adequate records must be kept. Losses may involve an accumulation of thefts over a period of time. Records should be such that the district can prove the total amount taken. The district auditor should be notified to investigate and document any loss. (See also Accounting.)

Commercial crime insurance should be placed with the same company providing other fidelity or crime coverage. It is often difficult to prove whether a loss was the result of an embezzlement, theft, or lack of faithful performance. If a theft policy and a fidelity policy are split between different companies and the district cannot prove whether the loss was a fidelity or theft loss, neither company may cover the loss.

WORKERS' COMPENSATION INSURANCE

Coverage

District employees and specified unsalaried volunteers performing district services are covered for death or injuries incurred on the job by workers' compensation insurance. Unsalared volunteers must be authorized by board resolution to be covered for workers' compensation insurance benefits. Students in ROP and certain other work experience programs may also be covered by the district's workers' compensation coverage. [EC §§ 1297, 51768-9, 72506; LC §§ 3364.5, 3368]

If an injury is accepted as job related, workers' compensation provides payment for all necessary medical care and partial payment of lost wages. There is a three-day waiting period for temporary disability unless the injured person is hospitalized. Medical, surgical, hospital, temporary disability, permanent disability, and death benefits may be provided. Coordination of temporary disability income and industrial leave is very important. (See also Human Resources.)

Notifications

When an employee is seriously or fatally injured during duty, immediate notice must be given by telephone or facsimile transmission (fax) to the State Compensation Insurance Fund, primary insurer or to the San Diego County Schools Risk Management or other JPA, whichever is the district's provider.

An injury that requires an employee to be hospitalized for more than 24 hours for purposes other than observation, or that causes the loss of a body part or the permanent loss of use of a part of the body, or any fatality must by law be immediately reported by telephone or fax to Cal-OSHA (see Additional Resources). Failure to make such a report will result in a penalty of not less than \$5,000. [LC § 6409.1]

Members of the San Diego County Schools Risk Management JPA need to notify CorVel, the JPA's Third Party Administrator, when a serious injury occurs so that qualified medical specialists can be brought in as quickly as possible (see Additional Resources).

All employees must be provided with claim forms within one working day of notification of injury/illness. Claims must be reported to the workers' compensation provider within five days of notice.

Recordkeeping – Cal-OSHA Logs

School districts are partially exempt from keeping Cal-OSHA injury and illness records. However, under the terms of the exemption, OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS may specifically direct that a district maintain illness and injury logs. [8 CCR §§ 14300.1-0.2] Third party claims administrators generally track injuries and can produce Cal-OSHA logs if needed to comply with a Cal-OSHA inspection. Such a report is available to the San Diego County Schools Risk Management JPA from CorVel.

Self-funded Workers' Compensation Plans

Self-funded workers' compensation plans are subject to annual reporting of unfunded future liabilities. [EC § 42141]

COMMERCIAL GENERAL LIABILITY COVERAGE

Because the scope of a district's liability is broad, a commercial general liability insurance policy should be used instead of several policies having more limited coverage. Many school districts carry all liability insurance, other than workers' compensation, in one combined commercial general liability policy. Coverage may be obtained through the San Diego County Schools Risk Management or other JPA or through insurance brokers or agents. For a discussion of liability of the governing board, see Exhibit 2. [EC §§ 35208, 72506]

Amount of Coverage

Districts should be aware that there is no correlation between a school district's enrollment and the amount of liability insurance that should be carried. Special situations may make higher limits of liability coverage desirable for a district with a small enrollment. Policies are now available on either a "claims made" or "occurrence form" basis. Occurrence form coverage is recommended.

Extent of Coverage

The named insureds in a liability policy should include the district; the governing board members, individually and collectively; and all other district officers and employees. Coverage applies when insureds are acting within the course and scope of their employment. Automatic coverage should be provided on all obligations assumed by the district under leases and contracts. Consideration should be given to including volunteers as named insureds, thereby extending liability protection for their acts/labors on behalf of the district. [20 USC §§ 6731-8; EC §§ 35208, 72506]

Product Liability

Districts operating cafeterias, snack bars, vending machines, etc., where there is a hazard of inadvertent food contamination, should consider product liability insurance protection, which may be either an integral part of or an endorsement to commercial liability policies. Product liability insurance affords protection from loss due to injury claims caused by consumption of food or beverages sold by the district.

Liability/Wrongful Act Claims

Detailed legal requirements apply to the receiving, allowance, or rejection of liability claims by the governing board or its designee. Proper handling of liability claims by the district is extremely important, as improper handling can result in the loss of important statutory defenses or in a default judgment. The risk manager, business manager, or other designated representative of the governing board should be trained in proper claims handling procedures. Whenever a liability claim is presented against the district, the district's legal counsel or the JPA designated legal counsel should be consulted.

Employment Practices Insurance (EPI) provides protection against certain wrongful act claims made by employees, former employees, or potential employees. It covers wrongful termination, discrimination (age, sex, race, disability, etc.), sexual harassment, and other employment-related allegations.

Owner Controlled Insurance Program

An Owner Controlled Insurance Program (OCIP), also known as "Wrap-up," is an owner controlled insurance program, usually with a \$0 deductible, that includes general liability, excess liability, and workers' compensation coverage "wrapped up" in one insurance policy. Property and builder's risk, also referred to as course of construction, coverage can also be included. The policy includes as insureds the school district, general contractor, and sub-contractors. Coverage applies to work at a construction site. The advantage of an OCIP is realized construction cost savings of between one and three percent. Bids should exclude a separate cost for insurance, which allows consideration of an OCIP. Districts should be aware that construction site safety is the key to realizing OCIP savings.

AUTOMOBILE INSURANCE

Liability coverage should be secured on all vehicles that are not covered under the commercial general liability policy. Refer to the section on liability insurance when considering vehicle liability insurance.

District employees using their personal vehicles for district business are required to carry personal vehicle liability insurance. Vehicle Code section 16451 requires liability insurance coverage of \$15,000 for bodily injury to or death of each person as a result of any one accident, \$30,000 for bodily injury to or death of all persons as a result of any one accident, and \$5,000 for damage to property of others as a result of any one accident. However, recommended limits are \$100,000 and \$300,000 for bodily injury and \$50,000 for property damage. The district's vehicle liability coverage should be reviewed and, if necessary, endorsed to provide excess coverage above the employee's private vehicle limit for circumstances in which the employee is using a private vehicle to perform district services.

Many districts utilize volunteers to provide transportation for extracurricular activities. Those districts covered under the San Diego County Schools Risk Management JPA are required to pass a resolution declaring volunteers to be considered as employees for the purpose of providing both excess vehicle liability insurance coverage and workers' compensation benefits. If no resolution is passed, vehicle liability coverage will not be provided to volunteers.

The standard commercial automobile liability insurance form may be used. The number of employees using personal cars in the service of the governing board should be included for the purpose of securing non-owned vehicle coverage. Physical damage coverage should generally be provided on the district's vehicles unless the district is financially able to assume the risk and possesses enough vehicles to provide some basis for self-insurance. Physical damage coverage includes collision, fire, theft, and comprehensive risks.

The insurance on school buses may be claimed as approved pupil transportation costs in the Annual Report of Pupil Transportation. (See also Transportation.) The full replacement cost of a schoolbus that is totally destroyed may not be covered under the replacement formula of state reimbursement. It is advisable that physical damage coverage be kept on all but the oldest buses.

BOILER AND MACHINERY (ENERGY SYSTEMS) INSURANCE

The existence in a district of boilers, air-conditioning systems, compressors, etc., presents potential safety risks. Any high-pressure boilers (over 15 pounds maximum pressure) should be covered with boiler insurance to protect against fortuitous losses from boiler defects that may not be discovered and remedied. Boiler insurance also provides for inspection by the insurance company, which satisfies the legal requirements for annual inspection. Low-pressure boilers usually are not insured because the use of safety valves and other devices eliminates the possibility of an explosion. However, some districts insure low-pressure boilers primarily to obtain the

inspection services of the insurance company. Damage to school buildings resulting from a boiler explosion is excluded in fire insurance policies; boiler insurance must be in place for the district to be covered.

Energy systems policies are available that extend coverage to include perils of electrical injury and mechanical breakdown of equipment. The San Diego County Schools Risk Management JPA provides energy systems coverage.

GLASS INSURANCE

A glass insurance policy provides for the repair or replacement cost of broken glass. District experience is an important factor in determining whether the purchase of glass insurance is advisable. Usually, only glass subject to unusual hazards is insured. Rates for this type of insurance are usually high. Self-funding for this exposure is generally most economical. A limited number of insurers issue a plate glass 50-50 endorsement, which makes it possible for a district to obtain coverage for one-half of the premium. However, in the event of loss, the balance of the premium is deducted from the amount of the claim. The San Diego County Schools Risk Management JPA property coverage includes glass coverage.

PUPIL ACCIDENT INSURANCE

Pupil accident insurance provides compensation for injuries incurred during school-sponsored activities. Coverage may be provided for all pupils at district expense or it may be available on a voluntary basis, with parents paying the premium. [EC §§ 35331, 49470-3]

Experience has shown that district-paid student accident insurance may reduce the frequency of liability claims. Available pupil accident insurance plans should be studied. Any voluntary plan should provide that administration of the plan, including premium payments and claims processing, be handled directly between parents or guardians and the insurance company. This arrangement precludes the district from being classified as an agent of the insurance company. [EC § 49472]

Field Trips

Districts that conduct field trips must provide or make available medical or hospital service or insurance for students injured while participating in such events. The medical or hospital service must be provided through one or more nonprofit membership corporations; one or more group, blanket, or individual policies of accident insurance from an authorized insurer; and/or a self-insurance program of the district. The costs of the medical or hospital service or insurance protection may be paid by the district, the student, or the student's parent/guardian. [EC § 35331]

Athletic Team Insurance

Districts must ensure that all members of school athletic teams have insurance protection for medical and hospital expenses resulting from accidental bodily injuries under specified conditions. This requirement can be met through insurance provided or made available directly by the governing board or student body organization or through the purchase of athletic student insurance. The required insurance must be issued by an admitted insurer or through a benefit and relief association as defined in Insurance Code section 10493(1)(c). Athletic team members who have insurance protection or a reasonable equivalent of health care benefits provided through other means, including but not limited to, benefits purchased by the student or his/her parent/guardian, comply with this requirement. [EC §§ 32220-4, 49470]

“Members of an athletic team” includes members of an extramural athletic team; members of the school band or orchestra; cheerleaders and their assistants and pompom students; team managers and their assistants; and any student directly assisting in conduct of the athletic event, including incidental activities.

Coverage shall be for an injury arising while members are engaged in or preparing for an athletic event sponsored or arranged by the district or student body organization or while members are being transported by the school district, or under its sponsorship, to and from the school and place of the athletic event. Insurance protection must be at least in the amounts specified in Education Code section 32221. Districts may choose to offer additional or broader coverage.

Effective January 1, 2007, offers of insurance coverage and other correspondence regarding insurance protection that the district sends to athletic team members must include a statement regarding the availability to qualifying students of no-cost or low-cost local, state, or federally sponsored health insurance programs (Chapter 108 Statutes of 2006). The statement must meet requirements specified in Education Code section 32221.5. [EC §§ 32221.5, 48985]

The cost of athletic team insurance can be paid by the district, the student body organization, the student, or any other persons on behalf of the student. If a student's parent/guardian is financially unable to pay the cost of insurance, the costs shall be paid by the district and/or student body organization.

FORGERY INSURANCE

Forgery insurance may be obtained on both incoming and outgoing financial instruments. A comprehensive policy is available to cover both types of forgery risk, or separate policies may be purchased. Historically, losses suffered by districts due to forgery have been so rare that few districts carry this type of insurance.

EMPLOYEE GROUP BENEFITS

Most districts have adopted plans under which health and welfare benefits are provided as a fringe benefit to employees, with the district paying some or all of the costs of the group coverage. The employee may pay through payroll deductions for any additional costs of extending coverage to dependents or the district may pay these costs also.

Some benefit plans offer group health, dental, vision, life, disability, and accident insurance to school district employees on a voluntary basis, with the premiums being paid through payroll deductions. The San Diego County Schools Fringe Benefits Consortium (FBC) offers the following voluntary group plans by payroll deduction: automobile and homeowners insurance, my wellness 360 Flexscan, long-term care, prepaid legal, life, and disability insurances (see Additional Resources).

In accordance with Governmental Accounting Standards Board Statement No. 45 (GASB 45), self-funded retiree health and welfare plans are subject to prospective implementation of annual reporting of any unfunded future liabilities beginning in 2007-08 (see Additional Resources). (See also Accounting.)

The district shall complete an actuarial evaluation of self-insured plans every three years. [EC § 17566]

Medicare Coverage

As long as an employee is employed, Medicare is secondary to the employer's group health plan for both the employee and spouse. (See also Retirement.)

HEALTH BENEFITS CONTINUATION

COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985)

The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) requires districts that sponsor group health plans to extend health coverage to qualified beneficiaries who otherwise would lose coverage because of a qualifying event (see Additional Resources). Notice of the right to continue coverage must be provided to qualified beneficiaries. While districts must make continued health coverage available, they can charge qualified beneficiaries 102 percent of the cost of coverage if continuation of benefits under the group plan is selected.

The health coverage offered for all plan years must be identical to that provided for a "similarly situated" individual at the time the qualifying event occurs. It must encompass

all health benefits for which the beneficiary was eligible on the day before the qualifying event. These benefits may include medical, dental, prescription drug, vision care, and any other related health benefits.

Maximum Continuation Period

If COBRA continuation provisions are elected, coverage begins on the day that eligibility ceases under the district's plan. When termination of employment or reduced work hours is the qualifying event for loss of eligibility, COBRA coverage will end in 18 months. Coverage can be continued for up to 29 months if a qualified beneficiary is disabled at the time of the qualifying event or becomes disabled within 60 days after COBRA coverage begins. Districts can charge up to 150 percent of the cost of coverage for the additional 11 months. If a spouse or dependent children lose eligibility under the district's plan (i.e., divorce or overage dependent), COBRA coverage can be continued for a total of 36 months. Coverage ends automatically if an individual fails to make a timely premium payment, becomes covered under another group health plan with no preexisting condition clause, or becomes entitled to Medicare.

Cal-COBRA continuation coverage applies to non-self-funded medical plans. Anyone losing medical coverage due to termination of employment or reduction in hours and who makes a COBRA election after January 1, 2003, is entitled to extend COBRA participation for medical coverage beyond the initial 18 or 29 months, for a maximum of 36 months from the original COBRA effective date. The carrier, not the district, administers the extended months. The qualifying beneficiary must contact the carrier prior to the expiration of the original COBRA continuation timeline. [H&SC § 1366.20 et seq.]

Health and Dental Continuation for Certificated Retirees

State law requires school districts to offer current certificated employee health and welfare and dental care benefit plans to certificated retirees and their spouses if the retiree is covered under STRS. The coverage may be rated as a separate group and may be fully paid for by the retiree and/or spouse. [EC § 7000 et seq.] Districts annually shall select a one-month open enrollment period for retirees. Coverage is available once upon retirement; if coverage is terminated, it cannot be reinstated.

STATE DISABILITY INSURANCE

Governmental entities are exempt from mandatory participation in the state disability insurance program. Voluntary participation is possible with contributions paid by employees. However, participation must be 100 percent of the identifiable employee group.

SAFETY AND LOSS CONTROL

Loss control (safety) programs are an effective way to assess the potential for injury or property damage from accidents, eliminate or minimize the chance of accidents occurring, and ensure that follow-up takes place to determine whether the programs are working. The following benefits accrue from loss control programs:

1. Fewer and less severe accidents and injuries
2. Lower insurance costs
3. Increased productivity
4. Assistance with state and federal mandates

Injury and Illness Prevention Program

Every employer is required by law to establish, implement, and maintain an effective Injury and Illness Prevention Program (IIPP) in accordance with Subchapter 7, General Industry Safety Orders, of Title 8. [LC § 6401.7; 8 CCR § 3203] Every employer must adopt written safety rules and regulations that relate to the employer's operation and keep specified records of the steps taken to implement and maintain an IIPP (see Additional Resources).

The following elements must be incorporated into a school district's IIPP:

1. An identified person or persons with authority and responsibility for implementing the program.
2. A system for ensuring that employees comply with safe and healthy work practices, including enforcement and disciplinary processes.
3. A system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions for employee feedback.
4. Procedures for identifying and evaluating work place hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.
5. Procedure to investigate occupational injuries and illnesses.
6. Methods and/or procedures for correcting unsafe or unhealthy conditions, work practices, and work procedures in a timely manner.

7. A program that provides training and instruction as follows:
 - a. To all new employees.
 - b. To all employees given new job assignments for which training has not previously been received.
 - c. To supervisors to familiarize them with the safety and health hazards to which employees under their immediate direction and control may be exposed.
 - d. Whenever new substances, processes, procedures or equipment are introduced into the workplace and represent a new hazard.
 - e. Whenever the district is made aware of a new or previously unrecognized hazard.

A sample "School Employee Training Matrix" is available on the San Diego County Schools JPA Web site (see Additional Resources).

Districts should encourage employees to submit complaints to the district safety coordinator instead of Cal-OSHA. School districts, as employers, are subject to Cal-OSHA inspections. Inspectors can conduct unannounced inspections of work areas in response to employee complaints, severe injuries, or other reasons. During an inspection, districts should be prepared to show the inspector a written Illness and Injury Prevention Program, including supporting documentation and record keeping forms, and to demonstrate that other applicable plans (e.g., Emergency Evacuation, Bloodborne Pathogens, etc.) are in place. Plan materials will be checked for currency and relevancy, and employees will be interviewed for safety awareness. Having a trained district representative who is prepared to handle Cal-OSHA and other government inspections will ensure that inspections proceed smoothly. (See also Maintenance and Operations.)

Safety Program

A district that chooses to be self-insured does so in the belief that its safety and accident prevention program will continue to limit losses. The right to self-insure workers' compensation may be revoked by the state if the employer is found guilty of flagrant or frequent violations of safety laws.

A supervisor's intentional violation of a Cal-OSHA safety order constitutes serious and willful misconduct if the violation causes an injury. It is not necessary to prove a Cal-OSHA safety order violation if the facts are that a supervisor permitted a hazardous

situation to exist. Any employee who is injured as a result of serious and willful misconduct by an employer may be entitled to have his/her workers' compensation benefits increased by 50 percent.

Court decisions have shown a somewhat liberal trend in defining the term "serious and willful." Previously, only extreme cases of misconduct were recognized. Today, employers, including school districts, are much more vulnerable to this claim. Thus, districts must be on the alert to ensure that supervisors enforce safety regulations and take prompt action to correct reported unsafe conditions.

Districts may be assessed civil or administrative penalties for violations of certain employee safety standards. Districts that do not have an operative Illness and Injury Prevention Plan will not receive any consideration for good faith efforts to remedy previous violations. [LC § 6428 et seq.]

The Legislature encourages school districts to provide a comprehensive training program in first aid and/or cardiopulmonary resuscitation (CPR) to students and employees (see Additional Resources). [EC § 49413]

Districts that choose to make available Automated External Defibrillators (AEDs) as part of their safety programs should establish strict guidelines for AED use. Training of AED operators must comply with legal requirements (see Additional Resources). [H&SC § 1797.196; 22 CCR § 100038(a)] An individual who renders emergency care, not for compensation, using an AED is provided immunity from civil liability, provided that person has completed the prescribed CPR and AED training courses. [CC § 1714.21] To help protect the district and its employees from litigation, detailed documentation and recordkeeping systems related to the AED component of the safety program are critical.

School districts should establish an aggressive safety program with proactive activities such as inspections, training, and safety meetings. It is recommended that members of the San Diego County Schools Risk Management JPA utilize the services of the JPA's loss control unit for assistance in establishing and maintaining an effective safety and loss control program.

All injuries and accidents should be investigated and reasons or causes determined so that corrective action can be taken to avoid similar problems in the future. Student Accident Reports (SARs) provide a valuable resource for evaluating conditions that result in accidents involving students and for identifying appropriate corrective action. School districts in the San Diego County Schools Risk Management JPA have access to an on-line student accident reporting system.

Asbestos Hazard Emergency Response Act

The federal Asbestos Hazard Emergency Response Act (AHERA) of 1986 required school districts to conduct inspections for asbestos-containing materials and develop management plans that describe abatement actions to be undertaken. Continuing requirements include re-inspections for asbestos-containing material every three years, updating and maintaining an asbestos management plan, parent notification of asbestos-related activities, and providing asbestos awareness training to custodial staff (see Additional Resources). (See also Maintenance and Operations.)

ADDITIONAL RESOURCES

1. American Red Cross for AED, CPR, and other training courses. Available: <<http://www.redcross.org/services/hss/courses/workplace.html>>
2. Asbestos Hazard Emergency Response Act of 1986. Available: <<http://www.osha.gov/dep/oia/whistleblower/acts/ahera.html>>
3. California Department of Industrial Relations, Division of Occupational Safety and Health, for Cal/OSHA Program information and resources. Available: <<http://www.dir.ca.gov/dosh/dosh1.html>>

Cal/OSHA, San Diego County, for required reporting of serious work-connected injury or fatality:

Phone: (619) 767-2280

Fax: (619) 767-2299

Guide to Developing Your Workplace Injury and Illness Prevention Program, Cal/OSHA, August 2005. Available: <http://www.dir.ca.gov/dosh/dosh_publications/iipp.html>

4. California Department of Insurance to search for companies by line of insurance and to access licensee information and insurance related laws and reports. Available: <<http://www.insurance.ca.gov/0100-consumers/>>
5. California Emergency Medical Services Authority:

AED Training Standards [22 CCR §§ 100031-42. Available: <http://www.emsa.ca.gov/laws/files/regs1_8.pdf>

Emergency First Aid Guidelines for California Schools (EMSA #196), 2004. Available: <<http://www.emsa.ca.gov/pubs/pdf/emsa196.pdf>>

6. Governmental Accounting Standards Board for link to Summary of Statement 45. Available: <<http://www.gasb.org/st/index.html>>
7. CorVel, Third Party Administrator for the San Diego County Schools Risk Management JPA, to report serious injury or fatality, phone: 1-800-757-7100
8. San Diego County Schools Risk Management Joint Powers Authority:

Fringe Benefit Consortium for insurance and other fringe benefit programs and sample board resolutions. Available:
<<http://www.sdcoe.net/business2/?loc=risk-fbc&m=4&pi=risk>>

Programs and services available to Risk Management JPA members. Available:
<<http://www.sdcoe.net/business2/?loc=risk-jpa&m=4&pi=risk>>

Risk management forms and surveys, including Claim Against District Form and Information (tort claim form). Available:
<<http://www.sdcoe.net/business2/?loc=risk-forms&m=4&pi=risk>>
9. "School Employee Training Matrix," sample prepared by San Diego County Schools Risk Management JPA and CASBO Risk Management R&D Committee. Available: <<http://www.sdcoe.net/business2/risk/etm.pdf>>
10. U.S. Department of Labor:

Occupational Safety and Health Administration for information and resources related to safety and health topics. Available:
<<http://www.osha.gov/SLTC/safetyhealth/index.html>>

Employee Benefits Security Administration for benefits under the Consolidated Omnibus Budget Reconciliation Act of 1986, COBRA Insurance Questions (FAQs), and resource links. Available:
<<http://www.dol.gov/dol/topic/health-plans/cobra.htm>>

LIST OF EXHIBITS

- | | |
|-----------|--|
| Exhibit 1 | Tort Claim Form and Cover Letter, Sample, San Diego County Schools Risk Management JPA |
| Exhibit 2 | Governing Board Liability, San Diego County Office of Education |

SAMPLE

(Send Out When Claim Form Requested)

[Date]

[Addressee]

Subject: Tort Claim Form Requirements

Dear _____:

Government Code Section 910.4(a) requires claimants wishing to submit a claim against the _____ District complete a claim form. A Claim Form for your completion is attached.

The Government Code has claim-submission timelines, so please submit your claim immediately.

Please direct questions to: _____ at _____.

Thank you for your cooperation.

Sincerely,

[Person writing letter]

CLAIM AGAINST THE _____ SCHOOL DISTRICT

DISTRICT NAME: _____

ADDRESS: _____

ATTN: _____

NAME OF CLAIMANT	MAILING ADDRESS	ZIP	TELEPHONE
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INSTRUCTIONS

Claims against the above school district must be filed with the Board of Education within six (6) months after incident occurred as required by Government Code Section 911.2.

Where space is insufficient, please use additional paper, include your name, identify each item of information by the appropriate paragraph number and sign each sheet.

1. OCCURRENCE OR TRANSACTION CAUSING THIS CLAIM

DATE _____ TIME _____ PLACE _____

2. STATEMENT OF INCIDENT (Specify the particular act or omission you claim caused the injury, damage or loss, if known.)

3. DESCRIPTION OF CIRCUMSTANCES

STATEMENT OF HOW THE DISTRICT OR ITS EMPLOYEES WERE AT FAULT (include names of persons causing injury damage or loss - if not known, state "not known.")

4. DESCRIPTION OF INCURRED INDEBTEDNESS, OBLIGATION, INJURY, DAMAGE OR LOSS

- | | |
|---|---|
| a. GENERAL DESCRIPTION:
(So far as known as of the date of this claim) | c. NAME OF PERSON INJURED

DESCRIPTION OF PERSONAL INJURY
_____ |
| b. NAME OF PERSONS/s CAUSING THE ABOVE | d. NAME OF PROPERTY OWNER _____
DESCRIPTION OF PROPERTY DAMAGED
_____ |

5. CLAIM

- | | |
|---|--|
| a. AMOUNT CLAIMED AS OF DATE OF THIS CLAIM: \$ _____ | c. TOTAL AMOUNT OF CLAIM: \$ _____
(Attach estimates or bills in support of claim.) |
| b. ESTIMATED AMOUNT OF ANY PROSPECTIVE INJURY, DAMAGE OR LOSS. \$ _____ | d. BASIS OF COMPUTATION OF AMOUNT CLAIMED |

6. EYEWITNESSES, ATTENDING PHYSICIAN, HOSPITAL, ETC.

NAME	ADDRESS	TELEPHONE
_____	_____	_____
_____	_____	_____
_____	_____	_____

I certify under penalty of perjury that I know the above to be true and correct of my own knowledge.

SIGNATURE OF CLAIMANT

DATE OF CLAIM

(IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL PAGES AS NECESSARY.)

GOVERNING BOARD LIABILITY

1. Liability of the Governing Board

Under what circumstances would a governing board be exposed to legal liability?
Typical examples include:

- A. Situations where the governing board acts in excess of, or in the absence of, its power or authority (called an abuse of discretion, or *ultra vires* action).
- B. Failure of the governing board to act when it has a duty or responsibility to act (known as an omission).
- C. Acting in a manner that is willful and wanton and conduct involving conscious and deliberate disregard of the interests of others (gives rise to a claim for punitive or exemplary damages).

2. Individual Liability of Governing Board Members

When might an individual governing board member be exposed to individual liability?

- A. Possibly under 1A and B above, where the action taken is deemed to be negligent, (i.e., an accident or error in judgment which causes injury or damage to another).
- B. Certainly under 1C above, if the member acts in an individual capacity and the conduct is willful, wanton and in conscious and deliberate disregard of the interests of another, often referred to as malicious conduct.
- C. Disclosing any information from a Brown Act closed session may result in exposure to individual money damages as well as possible criminal liability.
- D. Violating constitutionally protected civil rights of any employee or community member.

3. Defenses Available to the Governing Board and/or Individual Members

Once a legal or equitable action is initiated against a governing board, what defenses can legal counsel raise?

A. Immunity including qualified immunity. (Selected citations.)

Government Code section 818 - Public entity not liable for punitive damages.

Government Code section 818.2 - Public entity not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.

Government Code section 818.8 - Public entity not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional.

Government Code section 820.2 - Public employee not liable for injury resulting from his act or omission where the act or omission was a result of the exercise of discretion vested in the employee, whether or not such discretion be abused.

Government Code section 820.6 - If a public employee acts in good faith, without malice, under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable, he is not liable for an injury caused thereby except to the extent he would have been liable had the enactment been constitutional, valid and applicable.

Government Code section 820.9 - Members of city councils, mayors, members of boards of supervisors, school boards, governing boards of other local public entities, locally appointed or elected advisory bodies are not vicariously liable for injuries caused by the acts or omission of the public entity or advisory body. Nothing in this section exonerates an official from liability for injury caused by that individual's own wrongful conduct. Nothing in this section affects the immunity of any other public official.

Government Code section 821 - Public employee not liable for an injury caused by his adoption or failure to adopt an enactment or by his failure to enforce an enactment.

Government Code section 821.6 - Public employee not liable for injury caused by his initiating any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.

Government Code section 822.2 - Public employee acting in the scope of his employment not liable for injury caused by his misrepresentation whether or not it was negligent or intentional, unless he is guilty of actual fraud, corruption, or actual malice.

- B. Claims statutes and applicable statutes of limitation.
- C. All other defenses normally available to other litigants depending upon the nature of the claim against the government board, (e.g., contributory negligence and assumption of the risk).
- D. Under specific circumstances, a privilege including a qualified privilege.

4. Defense and Indemnity for Individual Governing Board Members

Can a governing board member expect to be defended by the school district? When can the public entity be expected to pay the judgment, if any is awarded against an individual member?

- A. The governing board members, individual members, and employees shall be provided liability protection from any claim or suit brought against them alleging injury to property or person resulting from any alleged negligent act or omission, violation or civil rights, or breach of duty.
- B. There will be no indemnity for a governing board member whose conduct is willful, wanton and in conscious and deliberate disregard of the interests of others, (i.e., where there is malice). Normally, there will be no defense by the public entity for this type of conduct. The member may be advised to obtain separate counsel on these matters.

The public entity may pay part of a judgment for punitive or exemplary damages if the governing board, acting in its sole discretion, find all of the following: [GC § 825]

- (1) The judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the school district.
- (2) At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the school district.
- (3) Payment of the claim or judgment would be in the best interests of the school district.

- C. Where the member's conduct is merely negligent or an abuse of discretion, the school district will assume the member's defense and pay any judgment rendered against the member.

- D. In situations involving allegation of negligent conduct with the willful, wanton, conscious, and deliberate disregard allegations, a school district may undertake the defense of the individual members under a "reservation of rights." The reservation of rights would contain an explanation that should a judgment of punitive damages be made against an individual member, the district would not pay this judgment, or if it decided to do so, all of the foregoing factors stated in paragraph 4A on the preceding page must be present, otherwise it is expressly prohibited by state law from doing so. Commitment to pay any judgment for punitive or exemplary damages on behalf of an employee must be made after an award or judgment has been rendered.