

Got Risk? Using Risk Transfers to Control Costs

By Robert Bambino, CPCU, ARM

For public school districts, risk financing is the financial outlay associated with litigation, such as settlements, verdicts, and the cost of legal defense. Even when districts purchase insurance to finance risk, a viable risk transfer program can still benefit districts in different ways:

- Liability policies are generally experience-rated; unfavorable loss experience negatively affects (raises) premiums.
- Schools utilize retentions and deductibles; losses that fall within them are the district's responsibility.
- Insurance does not always adequately cover every loss exposure.

- Verdicts in excess of policy limits are possible.

Districts can transfer risk through hold harmless and indemnification agreements and insurance procurement agreements in leases, construction and vendor contracts, transportation agreements, use of facility applications, consultant contracts, and inter-municipal cooperation agreements. Requiring a contractor or facility user to sign an indemnification agreement and provide proof of insurance is also a type of underwriting and can eliminate entities that cannot obtain or cannot afford business insurance.

Hold Harmless and Indemnification Agreements. Hold harmless and indemnity agree-



Table 1. Highest-Rated Technical Skills

Type of Agreement	Commercial General Liability	Automobile Liability	Workers' Compensation	Excess Liability	Professional Liability
Contractors Transportation	Yes	Yes	Yes	Varies ¹	No
Contractors Facility Users	Yes	Yes	Yes	Yes	No
Facility Users Consultants	Yes	No	No	Varies ²	No
Consultants	Varies ³	No	Yes	Varies ⁴	Yes

¹Excess coverage would be requested on anything except small projects that do not present more than minimal risk to the district, such as a locksmith repairs a broken lock or a computer repairperson to service a few computers.

²Excess policies are usually requested from facility users whose use brings a large number of people onto the school for an extended time.

³If consultants (e.g., speech therapists or psychologists) are performing services on school property, a commercial general liability policy is not required.

⁴The type of project dictates whether an excess liability policy is needed. For example, an architect managing a construction project would need excess insurance; a consultant training teachers and not working with children may not.

ments are a common method of shifting the responsibility to pay losses and related expenses, but their ability to completely transfer risk is limited. Some states have statutes that prevent one party from assuming another's liability. Unequal bargaining power between the parties may cause courts to negate an agreement. Also, an entity without applicable insurance is unlikely to have the resources to provide indemnification as required.

Hold harmless and indemnification agreements should be included in contracts, bid specifications, and facility use agreements.

Still, hold harmless and indemnification agreements should be included in contracts, bid specifications, and facility use agreements. Although not standard practice, schools should include indemnification and hold harmless agreements (and insurance procurement requirements) in purchase orders that cover arrangements for smaller projects such as tree trimming and roof and sidewalk repairs, which still present risk. Consult school counsel when drafting contract language.

Insurance Procurement Agreements. When schools contract with third parties, or when they permit the use of school facilities by outside parties, administrators should ensure the third parties are financially responsible and have the resources to carry through and defend and indemnify the school in the event of a loss. Obtaining a certificate of insurance with the coverages, insurers, and limits is a way of documenting it. However, insurance procurement agreements do not transfer risk

unless the district obtains additional insured status on a liability policy, such as a commercial general liability policy or an excess policy.

When *properly* secured, additional insured status will ensure defense and indemnification for covered losses from the other party's insurance carrier. The coverages, limits, and conditions of the policy control the extent of coverage afforded to the additional insured, not the terms of the hold harmless or indemnification agreement, which can be problematic. The best practice is to use contractual transfers and obtain additional insured status.

Additional Insured Endorsements. Additional insured endorsements modify a liability policy to include an entity as an additional insured. Coverage language included in the endorsement determines the extent of protection granted to the additional insured. Merely listing an entity as an additional insured on a certificate of insurance does not guarantee additional insured status for that entity. That's why obtaining and reviewing the actual additional insured endorsement is important—it lets you know if the district is getting the correct coverage.

What makes an endorsement acceptable? Look for an endorsement that has the broadest, less restrictive language. The school attorney and insurance representative can provide counsel and advice concerning contract drafting in general, coverages, specific language for indemnification and hold harmless agreements, drafting insurance procurement agreements, acceptability of the additional insured endorsement, and other conditions that may need to be in the agreement.

Coverages, Limits, and Problems

Every school district approaches coverages and limits differently. Table 1 shows sample coverages and limits for different situations in which successful risk transfers are common. Table 2 outlines some of the problems associated with risk transfer programs. Discuss waivers

Table 2. Problems and Pitfalls

Problem/Issue	Solutions
Expired or soon to expire policies	A current certificate must be produced if work is continuing or the facility is being used.
Missing required coverages	In some cases, outside entities may purchase required coverage from two separate brokers and/or different insurers. Check and see if a separate insurance certificate may be needed from another insurance producer.
Insufficient limits	The outside party may not be able to obtain coverage for the required amounts. Provide an opportunity to increase or change the limits.
No additional insured status	This could be an oversight, an attempt to restrict coverage, or a way to evade an extra cost to list an additional insured. Request a certificate showing your district as an additional insured.
Requested additional insured endorsement is not provided	Insurance producer may not have asked for the endorsement, or the producer may not have the authority to produce the endorsement. Obtain a copy of the endorsement.
The wrong additional insured endorsement is provided	Involve your school attorney or insurance representative to evaluate the endorsement.
District is not correctly identified on the certificate	Sometimes the name of an individual school will appear on the certificate or your district's proper name is not used. The district must always be correctly identified on the certificate as well as any other documentation such as agreements or endorsements.
Restrictive additional insured endorsement is listed on the certificate	Often insurance companies have restrictions and or specific criteria in order for additional insured status to be granted. Or, they use restrictive language as a matter of policy. Use only the broadest language so as not to restrict the district's additional insured status.
An unlicensed insurer provides the coverage	If an insurer is not licensed in your state, there may not be protection from the guarantee fund in the event the insurer becomes insolvent. Contracts should require all insurance companies to be licensed to do business with your district.
The company cannot obtain coverage with a licensed insurer	At times, companies may be unable to secure liability insurance with a licensed insurer. When this occurs, and if the district can make an exception, have your school attorney or insurance representative evaluate the financial stability of the unlicensed insurer and advise whether it is warranted to accept the unlicensed insurer.
The insurer does not have an acceptable rating by A.M. Best	Do not work with insurers who do not have acceptable ratings.

of contractual conditions (such as lowering limits or allowing alternative endorsements) with counsel before making a decision.

In addition to limits and coverages, insurance procurement agreements also include standard conditions:

- The insurers must be licensed in your state.
- Insurers must have a favorable A.M. Best rating (e.g., A- or greater).
- Policies cannot be cancelled without 30-days notice of commitment.
- The board of education, the district, and its employees and agents must be additional insureds.

- The district must be the certificate holder.
- Additional insured language must be on a primary and noncontributory basis.

A properly designed and managed risk transfer program will help the district reduce its insurance and risk financing costs, with minimal investment. In addition to directly lowering the cost of risk, it shows commitment to the risk management process, evidencing a strong commitment to insurers and brokers.

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