

MANAGING INSURANCE RISKS

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DISCLAIMER

Always consult with legal counsel before changing district policy or any contract requirements.



OVERVIEW

1. Elements of transferring risk
2. Reviewing the important aspects of a Certificate of Insurance
3. Understanding the risk transfer process in a contract
4. Important insurance requirements for MOST contracts



RISK MANAGEMENT 101

Risk Management is the process of minimizing or mitigating risk.

You need to:

- Identify a risk
- Assess the risk
- Make a risk management plan



RISK MANAGEMENT 101

Risk Avoidance: not performing the risk

Risk Assumption: assuming the ramifications for a risk

Risk Reduction: mitigating a risk

Risk Transfer: transferring risk to another party



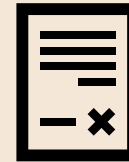
ELEMENTS OF TRANSFERRING RISK



Insurance Policy



Certificate of Insurance



Contract

WE PUT SCHOOLS FIRST | WE ARE A TEAM | WE SIMPLIFY THE COMPLEX



ELEMENTS OF TRANSFERRING RISK – INSURANCE COVERAGE



WHY DO WE NEED TO TRANSFER RISK?

- Protection of public-school dollars
- Holding contractors and vendors accountable
- Protection of time and reputation of the school

ELEMENTS OF TRANSFERRING RISK



Insurance Policy

- Agreement that you will transfer risk associated with your business activities to your insurance organization in exchange for premium dollars paid
- Includes a declaration page that outlines specific limits for different coverages within the policy
- Includes endorsements that detail and modify the policy



ELEMENTS OF TRANSFERRING RISK



Certificate of Insurance

- Evidence that the vendors you do business with have appropriate coverage
- Evidence that your district was added to the vendors policy to cover risks associated with the vendor's business activities at your district



REVIEWING THE IMPORTANT ASPECTS OF A CERTIFICATE OF INSURANCE



ELEMENTS OF TRANSFERING RISK – CONTRACTS



ELEMENTS OF TRANSFERRING RISK



Contract

- **Waiver of subrogation** – remove from contracts. Never waive your ability to subrogate or ability to hold the contractor accountable
- **Hold harmless and indemnification language** – transfer of risk from you to parties you do business with
- **Insurance requirements and additional insured status for your district on the contractors' insurance policy** – transfer of risk from your district to parties you do business with

ELEMENTS OF TRANSFERRING RISK



Contract

Waiver of subrogation means that a party to a contract waives the right to allow someone (usually an insurance company) to sue the other party to the contract in case of a loss

Why remove waiver of subrogation?

- Protection of public-school dollars
- Holding contractors accountable for their work or product

ELEMENTS OF TRANSFERRING RISK



Contract

Suggested waiver removal language for construction contracts:

“The parties agree that the School District is not waiving any rights its insurer(s) may have to subrogation. To the extent any term in the Agreement is contrary to this provision, such term is void and unenforceable.”



CONTRACT RISK MANAGEMENT

GUIDELINES FOR MICHIGAN PUBLIC SCHOOLS

Transferring risk reduces district exposure against third party liability, helping to keep liability exposures where they belong, as well as helping to keep the district's premiums lower.

TIPS FOR ALL CONTRACTS

- Indemnification and Hold Harmless language should be required from the vendor/contractor to protect the district from claims arising out of the contractors' & subcontractors' actions or inaction. Only use mutual indemnification language when dealing with another public body. (See sample contract language on next page).
- Certificates of insurance should be required from all vendors/contractors confirming commercial general liability insurance, workers' compensation insurance, and auto liability insurance. Request limits of no less than \$1 million for general liability and auto liability.
- Additional insured status by endorsement should be given to the district on all policies except workers' compensation. Require other party's insurance to be primary.
- Remove language from the contract that assumes the district will accept responsibility for claims that arise from the acts or omissions of vendor/contractor, or contracted staff.
- Waiver of subrogation language should be removed from all contracts.

TIPS SPECIFIC TO STAFF CONTRACTS

- The economic reality test should be referenced to determine if the district acts as the employer of a contracted employee. Contracts should clearly state that temporary workers are independent contractors.
- Contractor's policies should be required to cover all persons performing contracted work for the district (whether W2 or 1099) for liability, workers' compensation and auto insurance.
- Certificates of insurance should be required from all independent contractors and staff contractors confirming employment practices liability, sexual molestation coverage, commercial general liability insurance, workers compensation insurance, and auto liability insurance. Request limits of no less than \$1 million.

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Contract Risk Management continued...

TIPS FOR INDEMNIFICATION LANGUAGE

- Remove Unfavorable Indemnity language from district contracts in Hold Harmless/Indemnification portions under the insurance section. Avoid language such as "Arising out of the gross negligence of CONTRACTOR or its officers and employees..." This language does not protect the district as it limits responsibility of contractor.
- District should not agree to indemnify other entities because school districts are cloaked by Governmental Immunity. However, if there is a provision to indemnify, the provision should begin with: "To the extent allowed by Michigan law..."

SAMPLE FAVORABLE INDEMNITY LANGUAGE

Agree to "indemnify and hold the DISTRICT and its officers, employees, agents, volunteers, and board members harmless against any and all liabilities, claims, losses, actions, causes of action, costs, expenses, and attorney fees, of any kind, whether relating to property of DISTRICT or any third party, or for personal injury or death, or for compensatory or economic damages, arising out of or in any way attributable to the acts or failure to act of CONTRACTOR or its officers, agents, employees, and independent contractors."

SAMPLE MUTUAL INDEMNITY LANGUAGE

Each district shall be solely and entirely responsible for its obligations under this Agreement and for the acts and omissions attributable to it, or its officers, employees or agents during the performance of this Agreement. To the extent permitted by law, each District shall indemnify and hold harmless the other District from any claims, suits, damages or causes of action, including a defense thereof, arising out of any action or inaction by the District, its officers, employees, agents or subcontractors with respect to the services or this Agreement.

SAMPLE INDEPENDENT CONTRACTOR LANGUAGE

The parties understand and agree that _____ and _____'s employees are independent contractors. _____ and _____'s employees are not agents or employees of the district.

This document provides information of a general nature. It is not intended to be fully comprehensive, nor to provide legal advice or opinions relative to specific facts, matters, situations or issues. A member school district is encouraged to seek legal advice for their specific purposes.



INDEMNIFICATION LANGUAGE EXAMPLES

Contract will “Indemnify and hold the SCHOOL DISTRICT harmless against liabilities arising out of gross negligence of CONTRACTOR or its officers, agents, employees, and independent contractors.”



INDEMNIFICATION LANGUAGE EXAMPLES

CONTRACTOR and SCHOOL DISTRICT shall each be solely and entirely responsible for its own obligations under this Agreement and for the acts and omissions attributable to it, or its officers, employees or agents during the performance of this Agreement. To the extent permitted by law, the CONTRACTOR and SCHOOL DISTRICT shall indemnify and hold harmless the other party from any claims, suits, damages or causes of action, including a defense thereof, arising out of any action or inaction by their respective officers, employees, agents with respect to the services or this Agreement.



INDEMNIFICATION LANGUAGE EXAMPLES

Contract shall “Indemnify and hold the SCHOOL DISTRICT and its officers, employees, agents, and volunteers harmless against any and all liabilities, claims, losses, actions, causes of action, costs, expenses, and attorney fees, of any kind, whether relating to property of SCHOOL DISTRICT or any third party, or for personal injury or death, or for compensatory or economic damages, arising out of or in any way attributable to the acts or failure to act of CONTRACTOR or its officers, agents, employees, and independent contractors.”



FACILITY USE AGREEMENT GUIDELINES



These guidelines should aid a district in creating a signed contract or agreement between the district and a third party that will be using the school's grounds, buildings or facilities for use unrelated to normal school functions. In a facility use agreement, the third party user should agree to abide by the district's usage standards and acknowledge they are using the facilities at their own risk and will.

WHAT TO INCLUDE

- Identify the users
 - Have the user list the name of the person(s) responsible for arranging the facility use and who will be on site supervising the activity
 - Include addresses and phone numbers for these contacts
- Identify the date and time of use
- Provide a written set of school district rules, guidelines, and restrictions for using the facility and require user signature to validate that they acknowledge that they have received, read and understand these rules, and they agree to abide by the rules, guidelines, and restrictions (see below)
 - **Sample language:** *The User will be permitted access to the School District on [Date] from [Time] and will agree to follow all the rules governing use of the School District and any specific guidelines or restrictions at the sole discretion of the School District. Locations used shall be subject to the School District's discretion and the User will be responsible for all expenses related to its presence at the School District.*
- Include an indemnification clause or waiver language as part of the agreement (see below)
 - **Sample language:** *The User agrees to defend, indemnify and hold harmless the School District, its boards, employees, and representatives from any and all claims, actions, suits, judgments and expenses including claims, costs, attorney fees and damages in connection with its activities resulting in loss of life, bodily or personal injury, product liability claims and/or damage to property arising from or out of use by the User or its agents, members, partners, associates or employees, or any portion of the School District.*
- Require appropriate insurance and clearly detail minimum insurance requirements (see below)
 - Insurance requirements can be waived for low risk activities and short term events.
 - **Sample language:** *The User shall, at its own expense, keep in full force and effect until the cessation of its activity, a commercial general liability (CGL) insurance policy having limits of not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate combined single limits for bodily injury, personal injury and property damage. In addition, the policy shall name the School District as an Additional Insured on the policy.*
- Require that the user provide the school district evidence of in force coverage with a Certificate of Insurance prior to the facility use.
 - Verify that the Certificate is in force for the date, time and year of the event.

ADDITIONAL ACTION ITEMS

Unusual or long-term facility users may need a modified facility use agreement. The school district should involve the assistance of their legal counsel for these agreements.

Nothing in this document constitutes a legal opinion or advice. The information contained in this document reflects risk management advice that is in the public domain. A member school district is encouraged to seek legal advice before finalizing any document.

SUMMARY: TRANSFERING RISK

Manage risk by strong best practices, vetting contractors, strong contracts, obtaining certificate of insurance naming your district as an additional insured on the vendor/contractor's policy



Contract

Review the contract for:

- Terms, responsibilities and obligations of your district and contractor
- Insurance section: appropriate insurance coverages provided by contractor
- Appropriate hold harmless and indemnification language
- Waivers of Subrogation removed from contracts

Request from the contractor:

- Additional insured status for your district on contractors' insurance policy
- Obtain a certificate of insurance as documentation that the contractor has obtained insurance that matches required limits in the contract and evidence that the contract has added your district as an additional insured on their policy



IMPORTANT INSURANCE REQUIREMENTS FOR MOST CONTRACTS

WORKERS' COMPENSATION



- All required employers must provide this insurance or be registered as a self-insured entity with the State. Pays benefits to injured employees in the course and scope of their duties in the event of injury, disability or death
- Provides coverage on a no-fault basis for
 - Wage loss
 - Medical expenses
 - Vocational rehabilitation
 - Death benefits

GENERAL LIABILITY



- Liability Coverage for bodily injury, property damage, and/or personal injury to a third party arising from the contractor's negligence, operations or products
- Additional insured status for the district is required to be added by endorsement. Evidenced through a Certificate of Insurance



AUTOMOBILE LIABILITY



- Bodily injury
- Property damage
- Michigan No-Fault Law applies
- Personal injury protection
- Hire/non-owned vehicles
- Uninsured/underinsured motorists
- Garage operations



AUTOMOBILE LIABILITY



- Important if any motor vehicles are used in work or service
- Additional insured – generally included in policy form but as for Certificate of Insurance



ERRORS & OMISSIONS AND PROFESSIONAL LEGAL LIABILITY



- **Wrongful acts**
- **Monetary coverages**
 - Employment-related practices – harassment, discrimination, FMLA violation
- **Non-monetary coverages**
 - Office of civil rights charges
 - Equal employment opportunity commission charges
- **Defense costs**



OTHER POTENTIAL INSURANCE REQUIREMENTS

- **Sexual abuse liability coverage** – if a vendor has access to students
- **Umbrella/excess liability** – provides coverage over and above underlying policy limit for catastrophic losses
- **Cyber liability** – if a vendor has access to district data
- **Crime/fidelity coverage** – janitorial service or third-party administrator
- **Property insurance** – builder's risk and equipment floaters
- **Environmental liability** – painting contract, pesticide application, etc.



SUMMARY: INSURANCE REQUIREMENT BASICS

- Request proof that vendor has **general liability, auto liability, E&O, & WC** insurance per contract terms
- Policies should be on an “occurrence” basis. “Claims made” basis may apply to professional, cyber or pollution liability policies
- Require that school district is added as additional insured by endorsement to all liability policies
- Require notice of cancellation to your district
- Require appropriate* insurance limits



REVIEW

1. Elements of transferring risk
2. Reviewing the important aspects of a Certificate of Insurance
3. Understanding the risk transfer process in a contract
4. Important insurance requirements for *MOST* contracts



Questions?



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