



New Mexico
Public Schools
Insurance Authority

New Mexico Civil Rights Commission October 2, 2020

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ABOUT NMPSIA

The New Mexico Public Schools Insurance Authority (NMPSIA) was created by the NM Legislature in 1986 to serve as a purchasing agency for public school districts, post-secondary educational entities and charter schools. Through NMPSIA, member schools are afforded the opportunity to offer quality employee benefit and risk coverages.

Purpose of act. 22-29-2.

The purpose of the Public School Insurance Authority Act is to provide comprehensive core insurance programs, including reimbursement coverage for the costs of providing due process to students with disabilities, for all participating public schools, school board members, school board retirees and public school employees and retirees by expanding the pool of subscribers to maximize cost containment opportunities for required insurance coverage.

Authority created. 22-29-4

There is created the "public school insurance authority", which is established to provide for group health insurance, other risk-related coverage and due process reimbursement with the exception of the mandatory coverage provided by the risk management division on the effective date of the Public School Insurance Authority Act.

NMPSIA Today

• School Districts

- 88 Mandatory (*Excludes APS*)

• Charter Schools

- 96 Mandatory

• 27 Educational Entities

- 27 (*Optional*)



• Staff

- 11 FTE

• Board of Directors

- 11 Board Members
 - Governor Appointees
 - Alfred Park, President
 - Denise Balderas
 - Sammy J. Quintana
 - New Mexico Association of School Business Officials
 - Chris Parrino, Vice President
 - Public Education Commission
 - Trish Ruiz, Secretary
 - NEA-NM
 - Bethany Jarrell
 - David Martinez, Jr.
 - AFT-NM
 - Tim Crone
 - Superintendents' Association
 - Ricky Williams
 - Educational Entities at Large
 - Vacant
 - School Boards Association
 - Pauline Jaramillo

Risk Program

Property:

- Property deductible is \$1,000,000; \$750 Million in Insured limits Per Occurrence subject to sub-limits such as Flood and Earthquake: \$100 Million Annual Aggregate; \$800 Million in Terrorism Limits
- Crime Limit is \$2,250,000 Per Occurrence
- Assets insured are approximately \$26 Billion
- \$17 Billion are Frame/Stucco construction, the most flammable type of construction
- 60% of properties are located in Protection Class 9 or 10, 10 being the worst protection class
- 60% of properties are located in 100 Year Flood zones
- The property rate has increased only .021 per \$100 dollars of values since 1991

Liability and Workers' Compensation:

- Both Liability and Workers' Compensation deductible are \$1,000,000 Each Occurrence
- There are no Tort Claims Act Limit protections for Independent School Bus Contractors and suits that are filed in federal court
- 44,000 employees
- \$2.0 Billion in payroll
- 325,000 students
- 44,000 school athletic participants
- 9,000 volunteers
- 9,300 vehicles including buses

Civil Rights Lawsuits

- In order to provide similar, consistent data to the Commission, we adopted the same date range as the other responding entities, dates of loss from July 1, 2012 through June 30, 2016.
- For that date range, there were 84 civil rights suits filed. There were an additional 40 claims that were resolved pre-litigation.
- The 84 litigated claims represent 42% of the 198 litigated claims during the time frame specified.
- The loss payments totaled \$9,706,035 for the litigated claims; \$568,403 for the non-litigated claims.
- Plaintiffs' attorney fees are extrapolated as \$3,202,992 for the litigated claims and \$187,440 for the non-litigated claims.
- Defense costs and fees totaled \$7,643,552 for the litigated claims and \$205,563 for the non-litigated claims.

Coverage

- NMPSIA provides civil rights coverage through a combination of both self-insurance and reinsurance excess carriers.
- Coverage is afforded using a Memorandum of Coverage (MOC) or a customized insurance document and carriers reinsure the MOC.

Premiums

- NMPSIA utilizes a Cost Allocation Formula for determining insurance premiums for each pool Member. The process begins with collecting a cross-section of data or better defined as “exposures.” These exposures fall within four (4) categories of business insurance that are then used to calculate annual premiums next to a rating basis established by actuaries that are updated periodically:
 1. Workers’ Compensation - Exposure Basis Rating: Payroll Per \$100
 2. General Liability (including civil rights violations, professional and management liability) - Exposure Basis Rating: Student Count - Average Daily Attendance (ADA)
 3. Auto Liability (Buses and Vehicles) - Exposure Basis Rating: Number of Per Bus(es) and/or Per Vehicle(es) reported.
 4. Property - Exposure Basis Rating: Appraised Building Per Building Replacement Cost Value
- The cost-sharing formula proportionally allocates costs based on exposures, size compared to membership, credibility factors, experience modification formulas, and five (5) years of loss experience (excluding the current year) but stops each occurrence loss per Member at \$100,000.

Loss Prevention – Sexual Molestation

NMPSIA's highest dollar exposure is Sexual Molestation committed by an employee:

- 87 claims filed over the last 10 years. Over \$40 Million incurred.
- NMPSIA developed a Boundaries Policy which was ultimately adopted by the NM School Board Policy Service. NMPSIA is providing training to School Boards on the Policy and the impact on staff and budgets.
- NMPSIA provides training to school staff – teachers, maintenance, bus drivers and cafeteria workers on the Boundaries Policy.
- NMPSIA has also developed a nationally recognized Identifying a Predator Training that has been presented to – teachers, maintenance, bus drivers and cafeteria workers.
- NMPSIA has worked to make the mandatory Child Abuse training more accessible to school staff.
- In addition, NMPSIA has worked with the NMAA to implement a mandatory set of training video's for public school coaches on mandatory reporting, child abuse and Hazing.
- NMPSIA was a driving force in the creation of HM 57, which required establishment of a task force composed of NMPSIA, NMPED, NMAG, CYFD, AFT, NEA, and PTA to review school misconduct. The task force reviewed existing statutes for compliance gaps and contradictions, as well as staffing at PED. Recommendations were submitted to the legislature in February 2020. It is our understanding, the NMLESC will be reviewing the recommendations for inclusion in the 2021 session. It is our hope that stronger legislation and investigative efforts will make a dent in the growing issue of child abuse.
- NMPSIA is also working to implement a state-wide reporting system, that will incorporate and on-line anonymous reporting system for students and faculty. It is our intention to also present this in the 2021 legislative session.

Loss Prevention – Employment

Employment related issues include Discrimination to Whistleblower claims.

- NMPSIA provides extensive resources to schools to avoid Employment liability claims including discrimination claims under Title VII of the Civil Rights Act. These services include supervisory training, and staff training. NMPSIA provides 99% of the training on sexual harassment required every year to school staff. The training has had an impact on the frequency of claims. We also provide consultation to schools on an as requested basis for termination issue, in order to avoid a wrongful termination.
- Whistleblower claims are more problematic, NMPSIA's cases usually involve the local Board and/or the Superintendent or college President. In other, cases involving lower level employees NMPSIA can provide specific consultation to avoid a claim.
- NMPSIA also provides significant consulting for specific issues encountered by schools. These cover areas such as the Americans with Disabilities Act as Amended (ADAA), Fair Labor Standards Act (FLSA), and the Families Medical Leave Act (FMLA). NMPSIA is also providing consultation and training on the Families First Coronavirus Recovery ACT (FFCRA) and its proper implementation.

Loss Prevention – School Violence

School Violence ranges from Mass shooting to Bullying.

- NMPSIA has been actively providing training to schools on Intrusion, Shelter in Place, Lock Downs and Fortification.
- In 1998, NMPSIA began providing training to schools on the US Secret Service Threat Assessment process. In hopes that schools can implement a process to identify children intent on executing mass violence. Most districts have a threat assessment process in place, NMPSIA has been asked by several districts to review and retrain individuals involved in the process.
- NMPSIA has been providing on-site security assessments for schools for use in their School Safety Plans required by PED.
- NMPSIA provides training for schools on the development of an effective Bullying policy. A policy that is reviewed for effectiveness every year. Although all schools are required to have a bullying policy, few are effectively measuring their efforts. Bullying is incorporated in Hazing, Sexual Harassment training and employment discrimination training.

Loss Prevention – Restraint and Seclusion

- Restraint and seclusion issues arise generally from Special Education Programs. They are incorporated in US DOE regulations as well in NM PED. Restraint is generally prohibited in lieu of Crisis Prevention using de-escalation techniques. Although the schools routinely train in and use verbal de-escalation skills and disengagement safety techniques, there are a growing number of cases in which school employees are determining a disruptive student is a danger to themselves or others and calling in law enforcement. In cases involving a School Resource Officers, the LEA has provided an officer to assist the school with an extremely disruptive student, who presumably understands the historical behavior of a child and has an understanding of the behavioral interventions that will effectively reduce the disruption. In cases that do not involve an SRO, often an officer not trained in de-escalation techniques involving a special education student responds and the issue results in a claim.
- NMPSIA is providing de-escalation training for school bus drivers and cafeteria workers. The de-escalation training has been expanded to include Special Education staff.
- NMPSIA also has a Technical Assistance Program for Special Education (TAPS) in partnership the NM Cooperative Educational Services (CES) that aids Special Education staff on effective Individual Education Plans (IEP) and effective Behavior Intervention Plans (BIP). The TAPS program also uses a behavioral specialist to work with Special Education staff to look at behaviors and the BIP to avoid disruptive behavior.
- NMPSIA provided input into the revision of the restraint and seclusion changes made in 2020. However, it does not include any language regarding the training required to use non-lethal restraints. NMPSIA will continue to bring this issue to the forefront and may begin providing guidance on proper use of non-lethal restraints.

Loss Prevention – Armed School Security Officers

School Resources Officers (SROs)	School Security Personnel-Unarmed (SSP-U)	School Security Personnel-Armed (SSP-A)	School District Law Enforcement Agency (SDLEA)	Contracted Private Security-Armed (CPS-A)
86	263	33	17	8

- In 2007, NMPSIA began a review of armed security on school grounds. The findings indicated a lack of consistency in regulations regarding who could or could not carry a weapon on to school grounds. Several schools had contracted with private security firms to provide an armed presence at schools; however, the contracts generally did not set out proper rules of engagement. Several schools had entered into agreements with local Law Enforcement Agencies to provide School Resource Officers (SROs) however, these agreements also did not provide language regarding rules of engagement. SRO's were in many cases used to implement school discipline; a practice discouraged by the national SRO Association. A handful of schools had an armed employee who was assigned to carry a weapon as a deterrent to school violence, again without clear rules of engagement. One school District has an LEA authorized through the County Sheriff. Another District had a security staff that they were intending to arm in the 2020-21 school year.
- In 2019, NMPSIA worked with the NM Legislature to develop the definition of an Armed School Security Guard. NMPSIA, PED, NMDPS worked in 2019 and 2020 to develop standards for training, a standard weapon and a regular review of Standard Operating Procedures (SOP). Although the final rules were effective July 2020, COVID19 has redirected the attention of most schools away from arming staff.
- NMPSIA will be reviewing the SOP's for proper training regarding special education issues, cultural sensitivity, weapons training – both lethal and non-lethal.
- NMPSIA will be paying close attention to staff (required to be former law enforcement officers) with authority to carry a weapon on school grounds for proper conduct, i.e. rules of engagement, proper use of force, and compliance with the rules set by PED.

Legal Analysis

- Martin Esquivel, NMPSIA General Counsel



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Questions???

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