2013 CAIS Trustee/School Head Conference

A Primer on Insurance and Risk Management for Independent Schools

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Session Overview

- Insurance, Risk Management and Governance
- The Concept of Enterprise Risk Management (ERM)
- Core Coverage Areas
- New Coverage/Risk Management Solutions
- Best Practices Strategies
- Current Market Conditions
Insurance, Risk Management & Governance

“There is no way a board can establish sufficient policies and procedures in order to eliminate all risk and resulting lawsuits, but risk can be managed in order to keep litigation to a minimum.

The board's role is to assure that the appropriate policies--such as personnel, student activities and behavior, crises management, and financial management--are in place and that the school is following those policies and the resulting procedures every day in a consistent, fair manner.”*
Insurance, Risk Management & Governance

The work of the Board:

- **Fiduciary**—protecting the school to ensure achievement of mission
- **Strategic**—thinking about strategic and tactical moves to make the school sustainable
- **Generative**—visionary thinking
**Historical Perspective**

- No coordinated model for dealing with risk to the school
- Traditional solution was to purchase insurance and/or assume risk in house
- More recently, educational institutions have established formal risk management committees
- Enterprise Risk Management evolves to provide a *holistic* model for managing financial risk
Enterprise Risk Management

What is Enterprise Risk Management (ERM) in an Independent School?

- It is “a process, effected by an entity’s board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives” (COSO, 2004).
Enterprise Risk Management

There are five types of risk that schools should address in a comprehensive ERM:

1. Strategic risk that affects an organization’s ability to achieve its goals.
2. Financial risk that may result in a loss of assets.
3. Operational risk that affects ongoing management process.
Five types of risk (cont.):

4. Compliance risk that relates to externally imposed laws and regulations as well as with internally imposed policies and procedures concerning safety, conflict of interest and the like.

5. Reputational risk that affects a school’s reputation, brand or both.
Enterprise Risk Management

Risk can affect the entire school and covers a broad spectrum of exposure:

- Financial
- Operational
- Technological
- Environmental
- Regulatory
- Compliance

- Competitive
- Strategic
- Litigation
- Reputational
- Political
- Cultural
Enterprise Risk Management

Why Implement ERM?

- Create an integrated environment for managing risk
- Develop a consistent and systematic approach to managing risk
- Enhances the process of reviewing activities, assessing new ideas, and creating new opportunities
- Facilitates the alignment of a school’s risk appetite with risk management strategies
Enterprise Risk Management

Key stakeholders needed to implement ERM
Include:

- Board of Trustees
- Head of School
- Business Officer
- Human Resources
- Other Operational Personnel
- Outside Consultants
Implementing ERM

The Board’s Role

- Place on the school’s strategic agenda
- Make a commitment to risk management oversight
- Integrate into all areas of operations
- Make a part of every decision making process
- Support the Head of School in efforts to manage risk
- Make professional expertise available as appropriate

It is difficult to figure out the questions you are not asking, so ask lots of questions and pull on every thread you can.
Implementing ERM

The Audit Committee’s Role

- Determine whether the school has the appropriate policies and procedures in place to minimize risk
- Assess of financial risk and exposure regularly
- Assure adequate funding for staffing and facilities maintenance/repairs to minimize risks
- Require annual reporting/updating of risk management program
- **Conduct a Risk Management Audit**
Implementing ERM

The Head of School’s Role

- Promote risk management throughout the school community.
- Ensure that risk management is delegated to the appropriate individuals within the organization.
- Monitor the program and keeping the Board apprised of its implementation.
Implementing ERM

The Business Officer’s Role

- Key player in the risk assessment, implementation and management process, primarily for:
  - Financial
  - Human Resources
  - Facilities
Identifying and Managing Risk

Internal Risk Management Audit
Ten Key Areas to Focus On

1. Board Oversight on Fiduciary Matters
2. Financial and Accounting Policies
3. Student Programs and Activities
4. Facilities Management—maintenance, safety, security
5. Human Resources—employment practices, handbooks, records management
Identifying and Managing Risk

Internal Risk Management Audit

Ten Key Areas to Focus On (cont.):

6. Legal compliance—report filings, contracts
7. Technology—internal controls, safeguarding data & assets
8. Admissions—services, activities and policies
9. Fundraising—services, activities and policies
10. Environmental—indoor air quality, noise, lighting hazardous materials
Identifying and Managing Risk

1. Identify and analyze loss exposures
2. Examine alternative risk management techniques
3. Select Risk Management techniques
4. Implement Risk Management techniques
5. Monitor results

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# Identifying and Managing Risk

<table>
<thead>
<tr>
<th>Identify Degree of Risk Exposure</th>
<th>Determine Risk Management Approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>Retain/Control</td>
</tr>
<tr>
<td>Minimal</td>
<td>Retain/Control OR Insure</td>
</tr>
<tr>
<td>Tolerable</td>
<td>Retain/Control OR Insure</td>
</tr>
<tr>
<td>Frequent</td>
<td>Retain/Control OR Transfer OR Insure</td>
</tr>
<tr>
<td>Severe</td>
<td>Transfer OR Insure OR Avoid</td>
</tr>
<tr>
<td>Unknown</td>
<td>Insure OR Avoid</td>
</tr>
</tbody>
</table>
# Risk Management Audit and Risk Assessment

<table>
<thead>
<tr>
<th>Potential Risk Area</th>
<th>Type of Exposure</th>
<th>Likelihood of Exposure(1)</th>
<th>Extent of Potential Loss</th>
<th>Risk Management Approach(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial</td>
<td>Mishandling of cash transactions</td>
<td>Minimal due to checks and balances</td>
<td>$20,000</td>
<td>Retain/Control</td>
</tr>
<tr>
<td>Facilities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Human Resources</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) Rate: none; minimal; tolerable; frequent; severe; unknown  
(2) Avoid; Retain/Control; Transfer; Insure
Core Coverage Areas

- Property
- Business Interruption
- Equipment Breakdown
- Crime Coverage
- Liability Insurance (Complex!)
- Automobile Insurance
- Workers’ Compensation
- Catastrophic Coverage (Earthquake, Wind, etc.)
- Student Accident
Core Coverage Areas

Property Insurance – Key Coverage Issues

• Review your limits annually (building, contents, miscellaneous property, computer coverage, etc.)
• Coverage should be written “special form”
• Replacement Cost Coverage
• Coverage written on a “blanket” basis (for example, one aggregate limit applies to all buildings)
• Co-insurance requirement should be waived
• Review your deductibles (consider the highest that makes sense given exposure, risk tolerance, credit, etc.)
• Earthquake sprinkler leakage (EQSL)
Core Coverage Areas

- Business Interruption/Extra Expense Insurance
  - Business Interruption – Loss of tuition income
  - Extra Expense – Extra expenses to continue operations
  - Typically written on a “combined” basis
  - Complete a loss of tuition income worksheet
  - Write a one limit “aggregate” for all locations
  - Co-insurance requirement should be waived
  - Review family enrollment contract (critical!!!)
  - Review annually
  - Coverage to include earthquake claims? (separate policy)
Core Coverage Areas

- **Equipment Breakdown**
  - Coverage for Heating/AC units, boilers, electrical panels
  - Included in property section? (Can/may be written separately)

- **Crime Coverage**
  - Covers theft or disappearance of money and securities
  - Employee dishonesty
  - Computer fraud
  - Forgery or alteration
  - Funds transfer fraud
  - ERISA
Core Coverage Areas

- Liability Insurance – Types
  - General liability (bodily injury, property damage and personal injury)
  - Sexual abuse and molestation coverage (SAM)
  - Trustee liability insurance (D&O)
  - Employment practices liability insurance (EPLI)
  - Educators legal liability insurance (ELL)
  - Employee benefits liability insurance (EBLI)
  - Fiduciary liability insurance (covers personal exposure)
  - Employers’ liability insurance (Workers’ Compensation)
  - Foreign Liability
  - Pollution Liability
Core Coverage Areas

- Liability Insurance (Cont.)
  - Concurrency whenever possible (same renewal dates)
  - Primary Liability and Umbrella coverage – pick one carrier whenever possible
  - Crossover Claims (General Liability, Sexual Abuse & Molestation, Trustee Liability, Employment Practices Liability and Educators Legal Liability)
  - Liability Coverage Model – Aggregate Limit vs. Coverage Towers
  - Deductibles, self insurance and risk retention groups
  - Beware sub-limits!
  - Reporting requirements/legal counsel
Core Coverage Areas

Example A

Coverage Re-Cap
Combined Tower/Excess Tower
$26,000,000 Limits

Excess Liability
$15,000,000

Umbrella
$10,000,000

General Liability and Educators Legal Liability
$1,000,000

Automobile Liability
$1,000,000

Employers’ Liability
$1,000,000

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**Core Coverage Areas**

**Example B**

Coverage Re-Cap
Two Tower/Excess Carrier
$36,000,000/$35,000,000 Limits

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excess Liability</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>Umbrella</td>
<td>$25,000,000</td>
</tr>
<tr>
<td>General Liability</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Automobile Liability</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Employers’ Liability</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Educators Legal Liability</td>
<td>$25,000,000</td>
</tr>
</tbody>
</table>
Core Coverage Areas

Automobile Insurance

- Review vehicle schedule annually
- Review deductible strategies for comprehensive and collision coverage (self insure for older vehicles)
- Make sure that coverage meets umbrella liability underlying requirements (especially if written with a different carrier)
- Annual MVR reports for all regular staff/faculty drivers
- Consider running MVR reports for third parties who drive children to school activities
Core Coverage Areas

- Workers’ Compensation Insurance
  - Workers’ Compensation Coverage (Statutory)
  - Employers’ Liability Coverage (Gross negligence)
  - Coverage for volunteers included?
  - Is school in compliance with SB198?
  - Who is the key contact in the event of an OSHA inspection/claims investigation?
  - Pro-active claims management is critical (carrier and broker)
  - “Unit Stat” review 5 months following policy expiration to address any open claims
Core Coverage Areas

- Catastrophic Coverage
  - Earthquake Sprinkler Leakage (EQSL)
  - Earthquake
  - Flood
  - Wind
  - Deductibles (%; how are they applied?)
  - Analyze cost/benefit of coverage (perils covered)

- Student Accident
  - Covers medical expenses for students participating in sports and activities
  - Primary vs. Secondary coverage
New Coverage/Risk Management Solutions

- Data Security
  - Covers data and network recovery costs
  - Cyber Extortion
  - Business Income/Extra Expense coverage
  - 3rd party network security and privacy
  - Multimedia liability
  - Privacy breach and notification
  - Customer Support and credit monitoring expenses
  - Paper documents can be included
New Coverage/Risk Management Solutions

- Academic Security Risk
  - Worldwide coverage for kidnap and ransom
  - Disappearance of students from campus/school events
  - Violent acts resulting in injury or death
  - Threats of damage to school property
  - Unexpected political instability requiring evacuation
  - Coverage for loss of revenue, legal liability, medical expenses costs for increased security, counseling of students, staff and families
  - Coverage for communication and public relation services/crises management costs
New Coverage/Risk Management Solutions

- Bullying/Student on Student Violence

  - The Interagency School Safety Demonstration Act of 1985, defines bullying as one or more acts of sexual harassment, hate violence, or intentional harassment, threats, or intimidation, directed against school district personnel or pupils, committed by a pupil or group of pupils. Under existing law, bullying, including bullying committed by means of an electronic act (including a post on a social network internet web site), as defined, is a ground on which suspension or expulsion may be based. (AB 746, July 11, 2011)
New Coverage/Risk Management Solutions

- Bullying/Student on Student Violence

- Seth’s Law

AB 9, requires schools to establish policies to prevent bullying, be responsive to complaints about bullying, train personnel how to recognize and intervene in bullying, and make resources available to victims of bullying. (October 10, 2011)
New Coverage/Risk Management Solutions

- Bullying/Student on Student Violence
  - At this time it does not appear that AB 746 and AB 9 apply to private schools
  - Supreme court has declined to address First Amendment Rights for cyber bullying cases
  - California has statute that extends First Amendment protections to high school students at private schools
  - From a liability perspective, however, schools should endeavor to have policies and procedures in place that reflect best practices and consult with counsel in this area
New Coverage/Risk Management Solutions

- Bullying/Student on Student Violence
  - A number of colleges, public and private schools are using new technology to address this issue
  - Using an integrated approach, the online platform addresses the areas of:
    - Incident reporting
    - Investigation modules
    - Documentation
    - Prevention
    - Risk Assessment
    - Training
    - Solutions for eliminating hostile environments
Best Practices Strategies

- Concurrency whenever possible
- Primary Liability and Umbrella coverage – pick one carrier whenever possible
- Crossover Claims (General Liability, Sexual Abuse & Molestation, Trustee Liability, Employment Practices Liability and Educators Legal Liability)
- Liability Coverage Model – Aggregate Limit vs. Coverage Towers
- Deductibles, self insurance and risk retention groups
- Beware sub-limits!
- Reporting requirements/legal counsel
Best Practices Strategies

- Place ERM review on the Board’s strategic agenda
- Employ long-term thinking—proactive not reactive
- Establish an Audit Committee and/or Clarify Audit Committee’s Role in Risk Management Oversight
- Implement critical policies and update regularly
- Review and benchmark results on a “peer to peer” basis
- Review and benchmark employee benefits/retirement plans
- Conduct Insurance and Risk Management Audit
Best Practices Strategies

- Annual Audit Policy
- Conflict of Interest
- Whistleblower
- Document Retention/Management
- Banking and Cash Management Policies
- Fundraising—Gift Acceptance and Gift Management Policies
- Endowment Investment Management and Spending Policies
- Employment Policies and Practices
- Financial Aid and Tuition Assistance Policies
- Facilities Management Policies and Practices
Best Practices Strategies

- Consider implementation of Risk Management Committees

- At the Board Level
  - Finance Committee
  - Audit Committee
  - Risk Management Committee

- At the Operational Level
  - Business Officer
  - Facilities
  - Dean of Students
  - Director of Athletics
  - Transportation
Best Practices Strategies

- Conducting a broker RFP

  - First priority is to determine broker expertise in working with education risks
  - What collateral risk management resources are offered?
  - Do they have strong relationships with markets that specialize in school risks?
  - Can they provide benchmarking resources?
  - Recognize that effecting the right coverage is more critical than the lowest price
Current Market Conditions

- Firming of pricing for school liability coverage
- Increased pricing driven by higher claims frequency and severity for employment and educators legal liability claims
- California workers’ compensation pricing is firming due to increased frequency and severity of claims
- Property pricing remains competitive
- Catastrophe (Earthquake/flood) remains stable
- Underwriting requirements and claims history has greater impact than in the past
Thank you for your time.
Any questions?

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