



New Mexico  
Public Schools  
Insurance Authority

Presentation on Proposed Civil Rights Act  
Before the Legislative Education Study Committee  
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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

# Coverage

- Coverage is afforded using a Memorandum of Coverage (MOC) or a customized insurance document and carriers reinsure the MOC.
- Under the MOC, NMPSIA will pay for any award for any violation of any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico when alleged to have been committed by the member while acting within the scope of the duties. Defense and settlement costs are also covered.
- Coverage is limited to \$35 Million per occurrence, per member, through a combination of both self-insurance and reinsurance excess carriers. NMPSIA's Self-Insured Retention is \$1 Million.
- There is no member deductible.

# 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.

# Loss Prevention Programs

- **NMPSIA Loss Prevention Program**

- Established through NMAC 6.50.12 with the objective of reducing claims and costs.
- Facilitated through contractual arrangement between NMPSIA and Poms & Associates.



- **Programs**

- **Ergonomics**

Objective: Reduce the frequency and severity of costly soft tissue injuries by school employees.

- **Threat Assessment and Active Shooter**

Objective: Reduce the probability of an incident of multiple victim school violence.

- **Employment Practices Policy and Consulting**

Objective : Reduce the number of employment practices claims (wrongful termination, violation of contract).

- **Technical Assistance Program for Special Education**

Objective: Reduce the number of IDEA (Individual with Disabilities in Education) Due Process and Litigation claims.

- **On-site School Facility Audits**

Objective: Reduce the frequency of Worker's Compensation, Liability and Property Claims.

- **Identifying a Predator Training**

Objective: Reduce the number of sexual molestation claims in NM public Schools.

- **Bullying Prevention Training and Sustainable Policy Development Consulting**

Objective: To assist schools with understanding of the issues and development of policies addressing bullying.

- **Armed School Employees**

Objective: To assist schools with an understanding of the relevant statutes, policies, procedures and liabilities necessary to make informed judgements regarding arming employees. To assist with appropriate training necessary to reduce potential wrongful death claims

- **Anonymous Reporting System**

Objective: To provide an anonymous reporting system (*Say Something*) to report inappropriate behavior, to prevent gun violence (and other forms of violence and victimization) BEFORE it happens by educating and mobilizing youth and adults to identify, intervene and get help for at-risk behaviors.

# Legal Analysis

- Proposed law goes well beyond concerns about law enforcement and imposes a new theory of liability without caps on damages and an added burden of paying the other sides attorney fees.
  - Applies to school teachers, administration, staff and school volunteers
  - Allows certain Tort Claims to be manipulated into Civil Rights claims
    - Automobile and Bus Accidents
    - Premises Liability and Miscellaneous Conduct
    - Claims involving “rights to education”
  - Refuses to recognize the public policy with the Tort Claims Act of Balancing Interests
  - Will Result in Higher Premiums to School District and Less Money in the classroom

# Legal Analysis

- *What is the proposed Civil Rights Act Attempting to Accomplish?*

Vs.

*What Are the Actual Consequences of the This Legislation?*

- Difficulties of drawing line between what constitutes a tort versus what constitutes a civil rights claim.
- Without qualified immunity and case law, the first few years of interpreting the law will be difficult and costly.
- The value of a settlement could be 3-5 times higher under a contested Civil Rights claim.
  - \$100,000 settlement becomes \$300,000 with potential award of attorney fees.
  - Claims become “Fee Driven” even if value of the claim is nominal.
  - Cost of defending litigation will increase in state courts vs. federal courts with attorney fees provision.

# Legal Analysis

- Most Civil Rights Claims Involve a Claim of Substantive Due Process
  - In United States constitutional law, substantive due process is a principle allowing courts to protect certain fundamental rights from government interference, even if procedural protections are present or the rights are not specifically mentioned elsewhere in the US Constitution. Courts have identified the basis for such protection from the due process clauses of the Fifth and Fourteenth Amendments to the Constitution, which prohibit the federal and state governments, respectively, from depriving any person of "life, liberty, or property, without due process of law".
  - The “substantive due process” jurisprudence has been among the most controversial areas of Supreme Court adjudication. The concern is that five unelected Justices of the Supreme Court can impose their policy preferences on the nation, given that, by definition, unenumerated rights do not flow directly from the text of the Constitution.

Idea that someone could not sue under a freedom speech violation is simply not true. They can presently pursue those claims in federal court.

# Legal Analysis

## Fallacies In Majority Report

- Governmental Entities Could Not State There Would Be Cost Increases
  - Presented with an undefined law without specifics.
  - Very little time to explore with brokers and actuarial analysis.
  - Justice Bosson Has Stated There Will Be Increase Costs to Entities that could not be quantified at this time.
  - Increased Premiums Will Take Money from School Operating Budgets and concerns School Leaders.
  - Cases which were capped now become uncapped with attorneys using this law to get around Tort Claims Act.
  - Increase responsibilities with concurrent funding increases for Risk Managers, Investigators and training.
  - There ARE remedies for constitutional violations.
  - Federal Courts Are More Capable of handling Civil Rights Litigation with their existing resources.
  - No In-Depth Discussion about Basis for Striking Balance in preamble of Tort Claims Act.
  - No analysis provided by State Courts on the impact this litigation will have on existing dockets.

# Legal Analysis

- A broad-brush attempt to address a smaller issue of law enforcement.
- Not enough time to explore financial impact on schools if the law is going to be this broad.
- Seek a better balance to an individual's right to recover a valid claim versus the taxpayer's ability to pay unlimited damages.
- Look for mechanisms to better support schools – More PED investigators and training.



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# Questions???

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