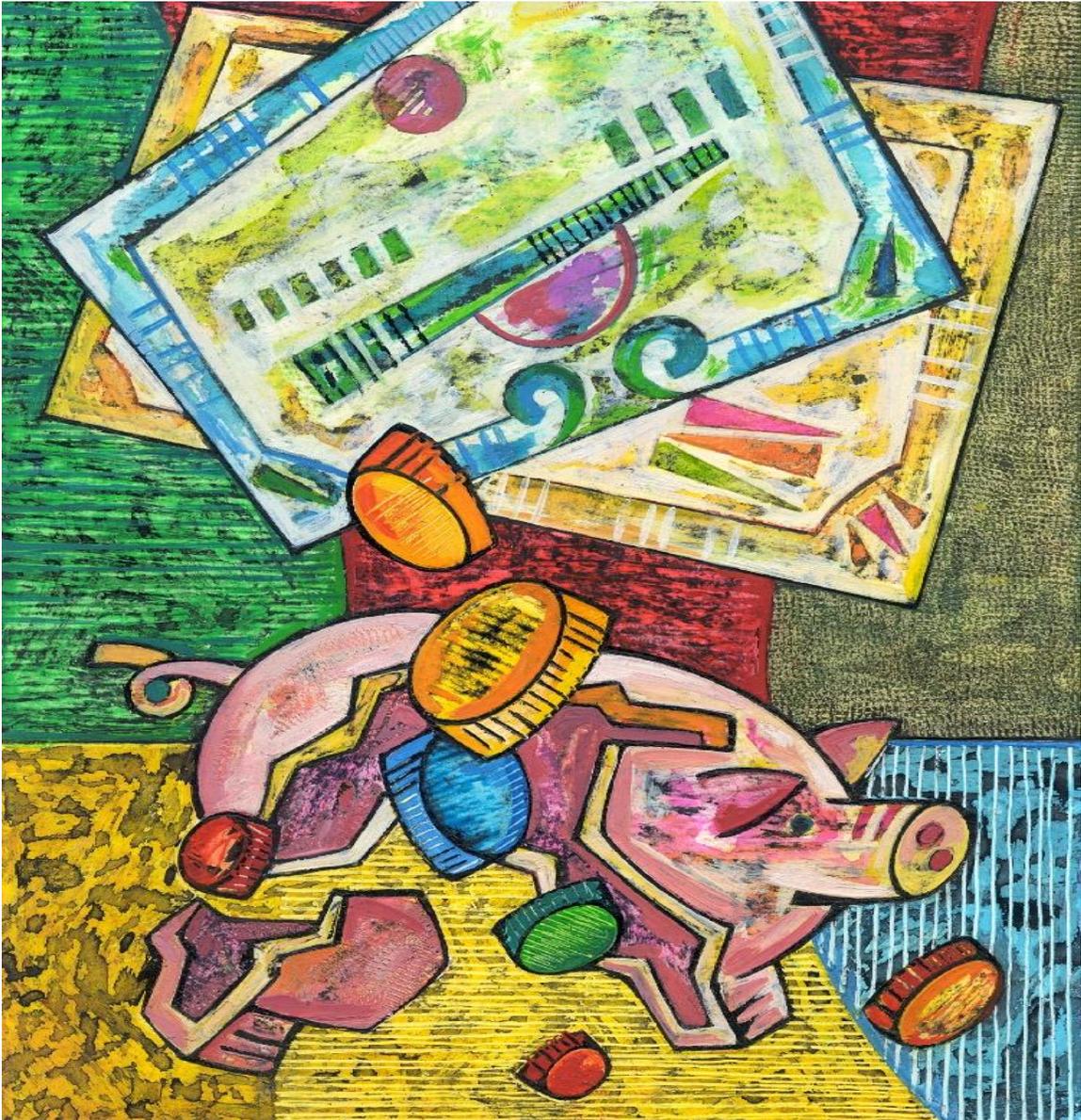


# Kentucky School District Insurance Guide



**Kentucky Department of Education**

**Terry Holliday, Ph.D., Commissioner of Education**

**April 2014**

## Introduction and Purpose

The purpose of this manual is to provide general information to Kentucky school districts regarding laws and regulations on insurance minimums and best practice recommendations from the Kentucky Department of Education. *The guidelines in this manual are to be used for general purposes only. Recommendations from the Kentucky Department of Education are offered as supplementary advice to assist districts in meeting statutory and regulatory requirements.*

Kentucky school districts should consider comprehensive insurance coverage designed to safeguard against unreasonable financial loss and meet the districts' commitments to employees and students. School districts may choose to purchase a variety of insurance coverage. However, some insurance is required. The types of insurance required **under statute or regulation** for Kentucky school districts are as follows:

- *auto and fleet insurance*
- *general and educators' legal liability, errors and omissions*
- *property insurance*
- *boiler insurance/equipment breakdown coverage*
- *unemployment insurance*
- *Workers' Compensation insurance*

Insurance is a transfer of risk from one entity to another. In general, the more risk assumed by an insurer, the higher the insurance premium will be. The degree of risk assumed depends on various factors, including the amounts of deductibles and coverage. Factors such as previous claims history and market conditions also affect what a district pays.

Several other types of insurance may be included in a policy at the district's request, including:

- *field trip insurance*
- *pollution (environmental liability) insurance*
- *student accident insurance*
- *special events insurance*
- *terrorism insurance*
- *school law enforcement liability insurance*
- *school violence insurance*

Checklists are provided throughout this manual to assist districts in obtaining and evaluating information from insurance companies and in determining the types and levels of coverage desired. The checklists contain many items for consideration, including optional coverage, recommended coverage, and required coverage. The narratives in each section provide clarification.

**Self-Insurance Pool**

Kentucky school districts may self-insure. A school district may cover property in a self-insurance pool as long as it is providing coverage *at least equal to* the standard of coverage per appropriate regulations.

**Annual Audits of School Districts**

School districts in Kentucky are audited annually by independent certified public accountants. These auditors, as part of their verification of assets, will review the various types of insurance coverage. The Kentucky Department of Education relies on information in the annual audits to verify required liability minimums and adequate insurance coverage.

**KDE Contact Information:**

Renee Thomas  
Office of Administration and Support  
Division of District Support  
15<sup>th</sup> Floor, 500 Mero Street  
Frankfort KY 40601  
Phone: (502) 564-3846, extension 4454

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## Section 1: Procurement

The requirements for procuring insurance are dependent upon whether the district operates under the Model Procurement Code (MPC).

### Districts that have not adopted MPC

KRS 424.260 provides general procurement requirements for school districts that have not adopted the MPC. The statute states that:

- 1) Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for **contractual services other than professional, involving an expenditure of more than twenty thousand dollars (\$20,000) without first making newspaper advertisement for bids.** (emphasis added)

Competitive bidding for insurance under KRS 424.260 is not required. Office of the Attorney General's Opinion (OAG) 82-170 agrees that districts that have not adopted the MPC are not required to competitively bid insurance (**insurance is a professional service**). However, both the OAG interpretation and KDE recommend that bidding insurance be seriously considered if the school district will benefit by utilizing the bid process.

### Districts that *have* adopted MPC

KRS 45A.380 provides general procurement requirements for districts that have adopted the MPC. The statute states that:

- A local public agency may contract or purchase through noncompetitive negotiation **only when a written determination is made that competition is not feasible** and it is further determined in writing by a designee of the local public agency that: ...
- (10) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, workers' compensation insurance, and unemployment insurance; (emphasis added)

Therefore, if a written determination is made by the district that competition is not feasible for these types of insurance (group life, group health and accident, group professional liability, workers' compensation, or unemployment only) they may be purchased without a bid process. A written determination would be a memo to the file signed by the procurement officer (which could be the superintendent of finance officer depending the local board policy), stating the reasons why competition is not feasible. **A determination of non-competitive negotiation should be the exception and not the**

**normal practice.** KDE strongly recommends that districts go through a competitive bid process to obtain these types of insurance, unless it truly is not practical or feasible to do so because of factors beyond the district's control.

General liability insurance and property insurance must be bid under MPC. The OAG interpreted the noncompetitive exception in the statute for various specific types of insurance to not include general liability insurance. Property insurance is defined by KRS 45A.345 as "supplies", requiring it be competitively bid. A seven (7) day bid advertising period is required under KRS 45A.365 (3).

### **All districts**

All districts, regardless of which statute governs the procurement requirements, are in need of the best and lowest prices for all goods and services and should utilize all opportunities to receive competitive pricing from all vendors, including insurance companies. In addition, competitive bidding serves to protect the value of services received by the public.

***Multiyear Awards*** - A local board of education cannot bind future boards therefore contracts must be either annual (one year with the option for multiple annual renewals if this is stated upfront in the bid), or for a multiyear period, with the right of cancellation for ***any*** reason with notice that is at least an annual right (usually a right of cancellation with 30 or 60 days' notice). The right of cancellation allows districts to enter a multiyear contract (for insurance, as an example) as long as the board has the right to cancel the agreement without cause with less than a year's notice of cancellation; **in addition the board has the right to change the agent of record at any time.** KDE recommends a maximum multiyear period of three years. **Insurance policies can be cancelled at any time by the district, in conformity with the cancellation provision in the contract.**

**When contracts are up for renewal, the current carrier should send you a renewal notice with a price for the upcoming year(s). If you do not receive this, one should be requested. This will assist the district in determining whether or not to re-bid the contract.**

***Evaluating Bids*** – Sealed bidding under KRS 45A.365 is the normal method for competitively bidding insurance under the MPC. KRS 45A.365 provides the award for sealed competitive bids "shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price after the application of any reciprocal preference for resident bidders". The lowest bid price should be inclusive of commissions and fees. The "evaluated bid price" is defined in KRS 45A.345 (8) to be "the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of a product, such as reliability, maintainability, useful life, residual value, and time of

delivery, performance, or completion”. Therefore districts may evaluate bids received and make awards for insurance based upon multiple factors in addition to price.

Districts may wish to consider factors such as the following, to determine vendor eligibility, and must stipulate selected criteria within the Invitation for Bids:

### **SUGGESTED CRITERIA FOR ELIGIBLE VENDOR AGENT/BROKER**

Vendors eligible to reply to the solicitation shall possess the following:

- a. An insurance agent’s license in the Commonwealth of Kentucky is in good standing
- b. Direct access to an insurance market holding a certificate of authority in the Commonwealth of Kentucky with, at a minimum:
  - A or better rating by A.M. Best; and
  - Experience with one or more programs of similar scope and volume; **and timely resolution of claims**
  - Value-added services, **such as an in-house loss consultant.**

***Insurance Consultant*** - A district may employ an insurance consultant to assist the district to navigate through the complexity of insurance industry jargon and pricing structures. **However, the district must bid this service.** In addition, districts must make the cost/benefit determination for hiring an insurance consultant. The procurement of insurance products must be in compliance with the requirements of procurement law even when using the services of an insurance consultant.

***Agent of Record*** – An agent of record is the specific agent representing the insurance company in the relationship between the insurance company and the districts. **Districts are not required to issue an agent of record letter, and an agent of record letter is not required to obtain quotes.** Note that if the district does not designate specific agents to serve as agents of record for specific insurance companies, then the insurance industry protocol is to assign the first agent who contacted the insurance company about the account, regardless of suitability of that agent and his experience for the specific client, the client’s location, or the client’s insurance needs. If the district does not provide the insurance company with an agent of record letter, the insurance company will assume that the first agent to provide a complete submission for a quote is the agent of record. Insurance companies typically provide only one quote for a potential insured. Quotes are

based on the information included in the submission made by the agent so it is important that the agent provide complete and accurate information.

Also note that an agent is paid by the insurance company and is legally bound to represent the insurance company, not the district, even if the agent is an independent agent representing multiple insurance companies. An agent, other than the district's current agent, obtaining quotes from insurance companies outside solicitation requests from districts effectively block that market to other agents. If a school district wishes to use an AOR designation, KDE strongly recommends that a competitive bid process or a request for qualifications is used to select the agent or broker who is to be designated as an AOR on behalf of an insurance company interested in bidding on school district insurance, before such designation occurs. See OAG 13-006. **The selection of an AOR should be based on services, not price. The insurance industry prohibits an AOR from providing the insurance client, the district; a "rebate" on the premium paid the insurance company. Any AOR promising this to a district is in violation of this insurance industry restriction. The district may change the agent of record designation at any time.**

Options for agent of record designation:

- One agent of record for each type of insurance (liability, property, etc)
- One agent of record for all types of insurance
- Multiple agents of record for each type of insurance
- One agent of record for each carrier
- No agent of record, simply bid the coverage

Even if the district designates one or more agents of record, bids can be received from carriers for which an AOR is not named. Therefore, to ensure the AOR designation does not limit competition; specify in the RFP that all companies are welcome to submit bids in addition to the companies with named AOR's. By including the AOR information in the RFP the number of solicitations by agents should be reduced.

Include language in the RFP requiring AOR's (if any) to submit quotes for the market/carrier which they represent. If the carrier declines to provide a quote, require the AOR to obtain documentation of such in writing.

**\*\*An agent of record may not assist you when writing an RFP, however you may receive assistance from an insurance consultant.**

***Workers' Compensation Quotes*** – KIMI provides "net of commission" quotes in accordance with Kentucky statute. The premium price is set by KIMI but agents have

discretion over their own commission which allows a district to receive different prices from different agents for workers' compensation coverage only.

The Department of Education recommends the following timeline for insurance bids:

**Step 1.** 120 days before year end (March 1) - Start procedures to bid insurance.

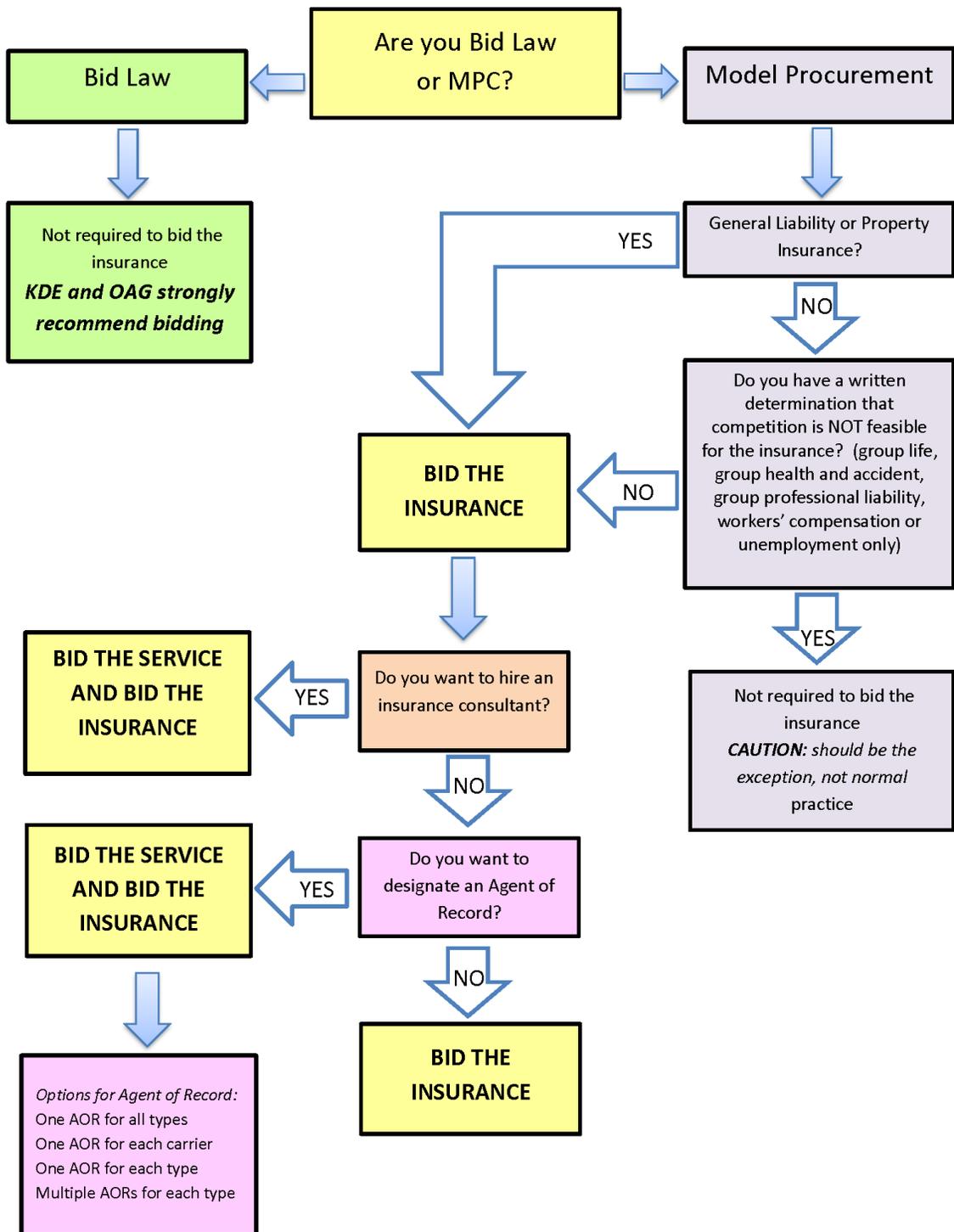
- a. Bid general liability, educators' legal liability, fleet, property, and workers' compensation, as well as optional insurance.
- b. Update Information for the new insurance year on all above coverages.
- c. Consider engaging an insurance consultant.

**Step 2.** 90 days in advance, advertise for bids, in accordance with existing laws and regulations. Advertisements should include school information and a contact person. The RFP should require that all bids received specify whether they are "net of commission" or inclusive of commission. A "net of commission" bid should be required to include the amount of the commission so all bids can be compared accurately. The RFP should also require that bids delineate the services included in the bid (e.g., loss prevention consultant services included in price or for additional fee) so qualitative comparisons of the bids may be conducted.

- a. Competitive bidders may need to contact the district to perform pre-bid loss control inspections at district facilities.
- b. A signed agent of record letter is not required to obtain a bid from an agent.

**Step 3.** 60 days in advance, bids should be due to the district to allow adequate time for review.

**Step 4.** Bids received may be opened in a public forum or sealed and opened at the same time with a district representative and at least 1 witness. Particular attention should be given to sub-limits and exclusions.



## Section 2: Auto and Fleet Insurance – Required

Auto and fleet insurance are required for each district. This includes collision and liability coverage for school district buses, cars and other vehicles.

All Kentucky Interlocal School Transportation Authority (KISTA) -financed buses have a collision-only policy, **not comprehensive** with a \$5,000 deductible. **All districts must purchase additional liability and indemnity insurance for the KISTA-covered buses.**

Per KRS 160.310, each local board may “set aside funds to provide for liability and indemnity insurance against the negligence of the drivers or operators of school buses, other motor vehicles and mobile equipment owned or operated by the Board. If the transportation of pupils is let out under contract, the contract shall require the contractor to carry indemnity or liability insurance against negligence in such amount as the Board designates. In either case, the insurance policy shall be issued by some surety or insurance company authorized to transact business in this state and shall bind the company to pay any final judgment not to exceed the limits of the policy rendered against the insured for loss or damage to property of any school child or death or injury of any school child or other person.”

Per 702 KAR 5:030 the Kentucky Department of Education requires liability or indemnity insurance for buses and sets the coverage limits. If there are pupils transported on school buses or other vehicles contracted to the board, the board must enter into an agreement with the contractor to secure fleet rates for liability or indemnity insurance for these vehicles. The Kentucky Standard School Bus Endorsement is furnished by the Commissioner of Education to insurers who have been awarded school bus insurance coverage. The endorsement must be attached to and become part of the school bus insurance contract after having been signed by an official of the insuring company having the proper corporate authority. *(Please see Fleet Insurance Checklist – p. 17)* The main requirements for schools include:

- Districts must ensure their bus fleet and contract carriers, at a minimum, with the coverage prescribed by the Department of Education.
- Districts must ensure that all contract carriers that transport children are properly insured.
- Once coverage has been obtained, the Kentucky Standard School Bus Endorsement must be signed by an authorized official of the insuring company and attached to the basic contract.

The following types of vehicles insured by the district that are used for or related to pupil transportation and eligible to receive insurance reimbursement include:

- School buses -- vehicles designed to carry ten or more passengers to and from school or school activities and that meet the KENTUCKY MINIMUM SPECIFICATIONS for school buses per 702 KAR 5:030.
- Vehicles owned or contracted by the board – those designed to carry less than nine passengers and that are in compliance with 702 KAR 5:130 and used to transport pupils in special situations.
- Service vehicles -- those that are directly related to the pupil transportation program.

***Minimum Coverage Limits:***

The minimum coverage limits set by the Kentucky Department of Education for school buses are:

- Property Damage Each Accident \$100,000
- Bodily Injury Liability Per Person \$250,000
- Bodily Injury Liability Per Bus Load \$2,000,000
- Uninsured Motorist Coverage \$500,000
- “No Fault” Coverage Per Person/  
Personal Injury Protection (PIP) \$20,000

The minimum coverage limits set by the Kentucky Department of Education for other student carriers per 702 KAR 5:130 (5) are:

- Property Damage Each Accident \$ 100,000
- Bodily Injury Liability Per Person \$ 250,000
- Bodily Injury Liability Per Bus Load \$ 1,000,000
- Uninsured Motorist Coverage \$500,000
- “No Fault” Coverage Per Person/  
Personal Injury Protection (PIP) \$ 20,000

***Combined Single Limit Coverage:***

If a school district chooses to bid “single limit coverage,” the Department of Education has set \$2 million as the minimum. The single limit coverage is applied to the total bodily injury and/or property damage claim, which means that, for any accident, there would be

no separation of coverage from bodily injury and property damage, and all claims up to \$2 million would be combined and paid.

At the time a district bids bus fleet insurance, it may consider bidding all district-owned vehicles as one package. This can be done in two ways.

1. Bid all vehicles at Department of Education minimum standards.
2. Bid non-pupil transportation vehicles at the minimum financial responsibility standards. This includes coverage for vehicles leased by the districts and used by district employees. To bid non-pupil transportation vehicles this way, an addendum to the bid must be included that states “all non-pupil transportation vehicles will be covered for the following amount.” Minimum standards set by the Department of Insurance may change periodically. The Department of Insurance should be contacted to find the minimum requirements before the district lets bids for vehicle insurance.

Indemnity insurance compensates the beneficiaries of the policies for their actual economic losses, up to the limiting amount of the insurance policy. It generally requires the insured to prove the amount of its loss before it can recover. Recovery is limited to the amount of the provable loss even if the face amount of the policy is higher. This is in contrast to, for example, life insurance, where the amount of the beneficiary's economic loss is irrelevant. The death of the person whose life is insured for reasons not excluded from the policy obligate the insurer to pay the entire policy amount to the beneficiary.

Most business interruption insurance policies contain an Extended Period of Indemnity Endorsement, which extends coverage beyond the time that it takes to physically restore the property. This provision covers additional expenses that allow the business to return to prosperity and help the business restore revenues to pre-loss levels.

### **Question and Answers**

*What are some examples of vehicles owned by the board that are not related to pupil transportation?*

Vehicles owned by the board but that are not used in the transportation of pupils include driver education vehicles, vans, service vehicles; and vehicles not related to student transportation such as, four-wheel drive vehicles and administrative vehicles. [702 KAR 5:030 (22)]

*What is “single limit” coverage?*

This is the maximum coverage that insurance is required to pay for damages resulting from a single accident.

*What is collision coverage?*

Collision insurance covers damage to vehicles caused by collision or upset, regardless of who is to blame for the accident. The policy may contain a deductible.

*What is comprehensive coverage?*

Comprehensive insurance covers damage incurred from losses other than by collision or upset. Comprehensive losses may result from fire, theft, vandalism, flood, falling objects, collision with a bird or animal or other event. Glass breakage is included under comprehensive coverage. If this coverage is purchased with a deductible, that deductible cannot apply to glass breakage in the windshield, doors and windows or the glass or other materials used in the lights required on vehicles.

*What are the procedures that must be followed for contract or privately owned carrier endorsements?*

Endorsements are needed for all contract drivers and must be on file in the district's central office. Each contract driver must fill out the appropriate form, and the district must send a copy of the completed form to the insurance company and/or insurance agent.

When a change in contract or privately owned carrier occurs, drivers should fill out the necessary forms, file the contract endorsement and send a copy to the insurance company. The district should immediately contact the insurance company and/or insurance agent to give them the following information:

- name of driver to be added, make and type of vehicle and vehicle identification number (VIN)
- name of driver to be deleted, make and type of vehicle and vehicle identification number (VIN)

### **Additional Information**

If questions should arise during the year concerning fleet insurance, the following numbers can be called to obtain assistance:

### **Questions concerning BUS BIDDING PROCEDURES AND GENERAL INSURANCE:**

Division of District Support

Transportation Services Unit

(502) 564-5279

### **Questions concerning BUS SPECIFICATIONS**

Division of District Support

Transportation Services Unit

(502) 564-5279

## Auto Liability and Physical Damage CHECKLIST\*

**Does the insurance policy include the following items? Please check the appropriate box and explain any limitations on coverage.**

	<b>Carrier:</b>		
	<b>Coverage Period:</b>		
Coverage Provided	<i>LIMIT</i>	<i>NONE</i>	LIMITATIONS
\$2,000,000 liability limit per occurrence – no aggregate			
\$1,000,000 uninsured/underinsured motorist limit - no aggregate			Uninsured/Underinsured motorist coverage does not apply to drivers or other district employees injured in the course of their regular duties.
\$20,000 Personal Injury Protection (PIP) limit per passenger			
Policy in full compliance with Kentucky Standard School Bus Endorsement			
Liability coverage for Hired/Non-owned vehicles			
Physical Damage coverage for hired vehicles			\$50,000 limit per vehicle
Losses related to loading/unloading of vehicle			
Liability coverage for Contract Drivers			Coverage is secondary to the contract driver's primary auto coverage, which must be in compliance with KDE requirements.
Liability coverage for district employees using their personal autos for district business			Coverage is secondary to the auto owner's primary coverage. Use of the vehicle for district business must be with the knowledge and approval of the district.

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Transportation of individuals other than students			Coverage is provided as long as the transportation is for a district-approved, education-related event.
Comprehensive and collision coverage			Coverage is provided when requested by the district.
Fleet automatic coverage			Coverage is automatically provided for each vehicle acquired by the district during the course of the policy period.

\*Physical Damage is applicable only when requested by the district.

Must be attached with appropriate bid forms. LIST ANY ADDITIONAL EXCLUSIONS.

**Attach Additional Sheets if Necessary.**

## Fleet Checklist

**Does the insurance policy include the following items? Please check the appropriate box and explain any limitations on coverage.**

	<b>Carrier:</b>		
	<b>Coverage Period:</b>		
Coverage Provided	<i>LIMIT</i>	<i>NONE</i>	LIMITATIONS
CB's, Car Phones, etc.			
Hired On physical damage and liability is coverage primary or excess?			
Comprehensive			
Collision			
Physical damage coverage			
Drive other car coverage			
Gap Coverage			
Hired car physical damage			
Other:			
Other:			
Other:			

Must be attached with appropriate bid forms. LIST ANY ADDITIONAL EXCLUSIONS.  
**Attach Additional Sheets if Necessary.**

### Section 3: General Liability Insurance - Required

General liability insurance is broad-based protection for school board members, district employees and school council members. **Districts should ensure that authorized volunteers are covered.** The protection extends to damages arising from charges of negligence, wrongful acts or failures to act that are within the scope of a district official's or an employee's duties.

The table listed below identifies the most common deductible amount for districts that are commercially insured or members of a risk pool. According a research report done by the Legislative Research Commission, most districts reported carrying no deductible on their general liability insurances.

<b>Deductible Amount Per Insurance Line</b>			
<b>Insurance</b>	<b>Most Common Deductible</b>	<b>Lowest Deductible</b>	<b>Highest Deductible</b>
General Liability	\$0	\$0	\$500,000

In an insurance policy, the limit of liability is often expressed as a value per occurrence and a separate value as an aggregate limit. The per occurrence coverage means an individual claim limits identify the maximum amounts an insurer will pay per claim. Depending on the insurance line, individual claim limits range from \$500 to \$25 million. The aggregate claim limits identify the maximum amount an insurer will pay for all claims within a policy year. Depending on the insurance line, aggregate claim limits range from \$500 to unlimited. The research report listed below explains the per occurrence and the aggregate claim limits.

An umbrella is an insurance product that helps protect assets by providing liability limits above and beyond other policies in place. In some cases, it may even broaden the protection.

<b>Individual Claim Limit Per Insurance Line</b>			
<b>Insurance</b>	<b>Most Common Limit</b>	<b>Lowest Limit</b>	<b>Highest Limit</b>
General Liability	\$1 million	\$1 million	\$5 million

<b>Aggregate Claim Limit Per Insurance Line</b>			
<b>Insurance</b>	<b>Most Common Limit</b>	<b>Lowest Limit</b>	<b>Highest Limit</b>
General Liability	\$2 million	\$1 million	\$5 million

## General Liability Checklist

**Does the insurance policy include the following items? Please check the appropriate box and explain any limitations on coverage.**

	<b>Carrier:</b>		
	<b>Coverage Period:</b>		
Coverage Provided	LIMIT	NONE	LIMITATIONS
Combined Limits of Liability			
Property Damage			
Medical payments			Provide Limit:
Medical payments for students			
Mental Anguish/Mental Injury			
Medical payments for volunteers			
Criminal Defense (if exonerated)			
Sexual Abuse/Molestation Alleged Abuser Board/Superintendent or other insured			
Civil Rights			
Trampolines			
Scuba Diving, Mountain Climbing, White Water Rafting and Survival Camps			
Corporal Punishment			
Lessor of leased equipment			
Lessor of premises			
Incidental Medical Malpractice Liability			
Damage to Professional Reputation <i>(libel/slander)</i>			
Employee Benefits Liability			
Cyber coverage			
Discounts for Security Devices			
Occurrence CGL Form			
Coverage Provided			
Claims Made Form			
Personal Injury			
Blanket Contractual			
Fire/ Legal Liability			
Pollution Liability			
Equipment Rented to Others			
Equipment Rented from Others			
Terrorism			
Does it included foreign/domestic? Is there an extra cost?			
Is School Violence included Is there an extra cost? Is counseling provided? What additional services are provided? (Umbrella) does it include or exclude			

School Violence?			
Mold and Asbestos Liability			
Tribunal			
Prior Acts & Retro Date			
Grief Counseling			
Kidnap & Ransom			
Tractors and Bulldozers			

Must be attached with appropriate bid forms. LIST ANY ADDITIONAL EXCLUSIONS.

**Attach Additional Sheets if Necessary.**

#### Section 4: Educators' Legal Liability Insurance – Required

Educators' legal liability insurance protects a school district from certain legal claims stemming from inappropriate or illegal actions by staff, teachers, or board members (KRS 160.160).

Boards of education are required to maintain liability insurance for school board and school council members per KRS 160.345. This policy should contain minimum liability limits of \$1 million to \$3 million together with property damage limits of at least \$50,000. Coverage should be extended to cover products liability and to include a personal injury clause and nurses' malpractice. In addition to the above, general liability insurance may also include school violence and sexual misconduct provisions. It is also strongly recommended that school districts obtain civil rights insurance to be included with the limits stated above.

Retroactive coverage is recommended by some insurance carriers to cover the district in the event that a former employee is involved in a legal issue regarding an incident that occurred while employed in a district.

**Coverage Amount** - Educators' legal liability coverage amounts vary by school district. Neither state statute nor administrative regulation prescribe coverage amounts, so local school boards determine how much insurance to purchase.

The table listed below identifies the most common deductible amount for districts that are commercially insured or members of a risk pool. According a research report done by the Legislative Research Commission, most districts reported carrying \$5,000 deductible for educators' legal liability.

<b>Deductible Amount Per Insurance Line</b>			
<b>Insurance</b>	<b>Most Common Deductible</b>	<b>Lowest Deductible</b>	<b>Highest Deductible</b>
Educators' Legal Liability	\$5,000		\$1 million
<b>Individual Claim Limit Per Insurance Line</b>			
<b>Insurance</b>	<b>Most Common Limit</b>	<b>Lowest Limit</b>	<b>Highest Limit</b>
Educators' Legal Liability	\$1 million	\$1 million	\$5 million
<b>Aggregate Claim Limit Per Insurance Line</b>			
<b>Insurance</b>	<b>Most Common Limit</b>	<b>Lowest Limit</b>	<b>Highest Limit</b>
Educators' Legal Liability	\$1 million	\$1 million	\$10 million

## Educators' Legal Checklist

**Does the insurance policy include the following items? Please check the appropriate box and explain any limitations on coverage.**

	<b>Carrier:</b>
	<b>Coverage Period:</b>

Coverage Provided	LIMIT	NONE	LIMITATIONS
District consent required to settle			
Mental Anguish/Mental Injury			
Race/National origin discrimination in Enrollment, education or extra-curricular Activities			
Failure to integrate or desegregate schools			
Claims arising for ERISA			
Claims arising from Employee Benefit Plan			
Sexual Molestation			<b>Prior Acts:</b>
Negligent hiring, retention or supervision of Employee who commits sexual molestation			<b>Prior Acts:</b>
Sexual harassment of employee			<b>Prior Acts:</b>
Sexual harassment of student			<b>Prior Acts:</b>
Punitive Damages			
Suits brought by governmental entity			
Retaliation Claims			
Claims arising from Workers Adjustment & Retraining Act (W.A.R.N.)			
Discrimination against employee			
Reorganizing or downsizing of more than 5% of employees in a 30 day period			
School Closing			
Breach of written/oral employment contract			
EEOC and Other administrative hearings to Address employment discrimination complaints			
Special Education due process hearings			Provide Limit:
Special Education Hearing Officers			Provide Limit:
ADA Hearings			Provide Limit:
504 Hearings			Provide Limit:
504 Hearings Officers			
Temporary employees			

Removal proceedings by State Board against Superintendents or board members			
School Board Members Liability Coverage. Identify exclusions			
Terrorism Does it included foreign/domestic? Is there an extra cost?			
Is School Violence included Is there an extra cost? Is counseling provided? What additional services are provided? (Umbrella) does it include or exclude School Violence?			
<b>Prior acts included and retroactive dates?</b>			<b>Specify Date or Full Prior Acts:</b>
Other:			
Other:			
Other:			

Must be attached with appropriate bid forms. LIST ANY ADDITIONAL EXCLUSIONS.  
**Attach Additional Sheets if Necessary.**

**Section 5: Property and Boiler Insurance/Equipment Breakdown Coverage - Required**

Property insurance is required by 702 KAR 3:030 for each building owned by the school district. The contents of each building also must be insured. Insurance coverage provided for in Sections 2 and 3 of 702 KAR 3:030 shall be obtained by school districts after having advertised for bids.

Property can be insured at *replacement cost* or *actual cash value*. Replacement cost provides the insured the cost to replace an item or structure at its pre-loss condition. Actual cash value provides the insured with only the actual cash value of the item at the time of the loss, which could be well below the amount required to replace the item. Replacement cost coverage is designed so the policyholder will not have to spend more money to get a similar new item.

Building must be insured at 100 percent of replacement costs. The replacement costs for a building include the increased costs of construction that would be required to replace the facility and contents since the original building was constructed. (*See Property Insurance Checklist*)

- A building requiring insurance and containing a steam boiler shall have boiler and machinery coverage having a limit of liability equal to the total value of the real and personal property in the building in which the steam boiler is located. Boiler and machinery insurance covers the contents of the building in which a steam boiler operates.

Equipment breakdown coverage includes coverage for boilers and is the industry standard name for such coverage. Even if the district does not have a boiler in any building, equipment breakdown coverage is strongly recommended because property insurance does not automatically include coverage for electrical systems.

**\*\*If a school building cannot be insured on a replacement cost basis**, the policy insuring the building shall carry an agreed-amount endorsement, and a certification signed by the local superintendent and board chairman shall be attached to the policy stating that it would not be fiscally responsible to provide replacement cost coverage for the building being insured.

Despite the required insuring of individual buildings and contents at 100 percent of replacement cost, a blanket limitation on an insurance carrier's liability per occurrence may be procured if an individual district's schedule of values exceeds \$100 million and the blanket limitation equals at least \$100 million and at least 50 percent of total replacement costs.

Insurance shall be provided by carriers licensed to do business in the state of Kentucky and shall have features that provide for:

- a maximum of 80 percent coinsurance

- a per occurrence deductible on all perils not to exceed five percent of the prior year's capital outlay allotment or \$25,000, whichever amount is smaller
- a replacement cost endorsement

When property insurance is bid, school districts must use the replacement cost values per 702 KAR 3:030. The most current values are maintained on the KDE facilities page or can be found using the following link:

<http://education.ky.gov/districts/fac/pages/default.aspx>

It is the responsibility of each district to notify the property insurance agent of any increase or change in replacement cost values.

A school district may cover property in a self-insurance pool that meets maximum standards of coverage specified in 702 KAR 3:030(2) and (3). A self-insurance pool shall be adequately reinsured by a carrier approved to do business in the state of Kentucky and shall provide facilities for insuring all of the property of an individual district to which this administrative regulation applies.

Some carriers may *recommend* 100 percent replacement cost coverage with no coinsurance. The larger the coinsurance number, the greater the potential penalty. The percentage of coinsurance should not be greater than 80 percent. If there is a coinsurance penalty, there should be an agreed-amount endorsement to the policy. Carefully review the limitations for property coverage. There are many sub-limits within most property forms.

The term "coinsurance," when used in the context of property insurance, is the percentage of value that the district is required to pay. A building with a value of \$10 million and a policy with a 90 percent coinsurance clause must be insured for at least \$9 million.

The "value" is determined at the time of the loss. If the amount of insurance is found to be under the coinsurance percentage, then a penalty is applied, reducing the claim payment. This costs the policyholder.

**For example:** If the district decides to buy \$8 million of insurance, and a \$2 million fire occurs, the claim is calculated by dividing what was purchased (\$8 million) by what should have been bought (\$9 million). The result in this case is 89 percent. The factor is multiplied by the amount of the loss. The calculation works out:

$$\$2,000,000 \times .89 = \$1,780,000$$

The policyholder will receive \$1.78 million (less any deductible) for the \$2 million claim. **That results in a penalty to the policyholder of \$220,000.**

Most property insurance policies contain a coinsurance clause. Building insurance, contents coverage, computer coverage, inland marine policies and tool and equipment floaters all contain the penalty clause mentioned above. Some require 100 percent of the value.

In property insurance, coinsurance will never result in a larger payment on a claim. It can only reduce the settlement or have no impact. In "better" times, insurance companies offered to eliminate the coinsurance clause for almost no premium. Most insurers now charge for the removal of the penalty. In many instances this is worth the extra premium.

Coinsurance in property insurance never helps the insurance buyer, and it should be eliminated when possible.

Districts also need to understand that property replacement rates do not consider ancillary construction costs such as architectural, finance, and siting. Debris removal is another cost that is typically not covered under property insurance. Therefore by excluding these potential costs, school districts may be insufficiently insured and could end up paying these costs directly if a property insurance claim is filed. Consider all these costs when obtaining coverage.

## Property Insurance Checklist

**Does the insurance policy include the following items? Please check the appropriate box and explain any limitations on coverage.**

Carrier:
Coverage Period:

Coverage Provided	LIMIT	NONE	LIMITATIONS
Accounts Receivable			50,000
Arson Reward			
Boiler & Machinery/Equipment Breakdown Coverage			
Brands and Label			
Computers & Computerized Equipment – (Replacement Cost or Actual Cash Value)			
Contractors Equipment – (Replacement Cost or Actual Cash Value)			
Debris Removal			
Ordinance or Law Deficiency			
Loss to Undamaged Portion of Building and Demolition			
Increased Cost of Construction			
Data and Media Reproduction			
Earthquake Deductible			5% or \$25,000
Earthquake			
Errors & Omissions			
Exhibition & Off Premises Functions			
Extra Expense			
Fine Arts			
Fire Department Service Charge			
Fire Protection Equipment			
Backup of Sewer & Drain			
Foundation and Underground Pipes			
Glass			
Inland Marine Including EDP			
Audio Visual			
Musical Instruments			
Band Uniforms			
Marring and Scratching			
Newly Acquired Building & Contents			120 days
Off-Premises Interruption			
Outdoor Property			
Owned Vehicles on Premises			
Personal Effects and Property of Others			
Pollution contamination & cleanup			
Premises Boundary			1,000 ft.
Project Research & Development Documentation & Prototypes			
Property In Transit			
Rate Change Notice			
Rental Income & Rental Value			
Royalties			
Unnamed Locations			
Valuable Papers and Records			
Flood deductible			
Flood			
Trees, shrubs or plants			

**Additional coverage**

Replacement Cost			
Blanket Coverage			
All Risk			
Flood/Quake/Mine Subsidence			

Other Structures			
Glass/Signs			
Covers Temporary Locations			
Extended Period of Indemnity			
Installation Floater			
Employee Dishonesty			Who is Excluded:
Loss to Undamaged Portion of Building And Demolition			
Mold and Asbestos Liability			
Business Income			

**Note: Review coverage for any coinsurance penalty. Districts should seriously consider not accepting any coinsurance penalty higher than 80 percent.**

Must be attached with appropriate bid forms. LIST ANY ADDITIONAL EXCLUSIONS.  
**Attach Additional Sheets if Necessary.**

## Boiler Machinery/Equipment Breakdown Coverage Checklist

**Does your policy cover the following items? Please check the appropriate box and explain any limitations on coverage.**

<b>Carrier:</b>
<b>Coverage Period:</b>

Coverage Provided	<i>LIMIT</i>	<i>NONE</i>	LIMITATIONS
Accident Expediting Expense			
Change in Temperature/Contamination by Refrigerant			
Systems Breakdown Coverage			
Business Interruption			
Extra Expense			
Automatic coverage of newly acquired or replaced objects			
Coverage on a broad form basis, including repair and replacement cost			
Terrorism Does it included foreign/domestic? Is there an extra cost?			
Other:			
Other:			
Other:			

Must be attached with appropriate bid forms. LIST ANY ADDITIONAL EXCLUSIONS.  
**Attach Additional Sheets if Necessary.**

## Section 6: Unemployment Insurance - Required

Public school districts in Kentucky must provide unemployment insurance benefits to their employees (KRS Chapter 341).

Unemployment Insurance (UI) provides short-term financial support to employees when they are unemployed through no fault of their own. The school district pays for this benefit through unemployment taxes on the payroll to the state agency. Coverage extends to former employees. **Since unemployment insurance is provided through payment of a “tax” instead of a “premium” this service cannot be bid by an insurance company.**

School districts can pay for unemployment insurance benefits in one of two ways. One approach is for a school district to make periodic contributions to a third party that will process claims and transfer funds to the state’s unemployment insurance fund whenever benefits are drawn by a district employee or they can choose to reimburse the state directly for each unemployment insurance claim.

- Districts using a third party are less prone to spikes in unemployment insurance benefit payments because they make annual or monthly contributions. Making contributions regardless of actual claims means districts do not have immediate access to those funds during the fiscal year.
- Districts that reimburse the state for each claim have a greater control over their funds. Such districts only expend money when benefits are paid. Those districts may experience monthly swings in unemployment insurance expenditures as benefit payments may vary throughout the year.

Unemployment Insurance is a joint federal-state program. Federal unemployment law places many requirements on the states concerning who must be covered and how benefits must be financed. The Kentucky General Assembly has enacted laws that govern the payment of unemployment taxes and benefits in this state. The role of the Kentucky Office of Employment and Training (OET) is to see that these laws are carried out fully and fairly.

OET publishes a manual with detailed information for employers. The manual is available for download at this link: <http://oet.ky.gov/>.

The direct link to the manual is <http://www.oet.ky.gov/des/ui/EmployerGuide2008.pdf>.

## Section 7: Workers' Compensation Insurance - Required

All employees of the district shall be protected against loss from an accident on duty through a Worker's Compensation Insurance policy written in accordance with the Kentucky Revised Statutes covering the protection of employees. The final annual premium shall be determined through an audit of payrolls for the fiscal year. The recommended limits are those required by statute. Coverage should be purchased through an "A" rated carrier or a licensed group insurance program.

Worker's Compensation Policies are written in two (2) parts:

Part 1 – The first part provides coverage for injuries, regardless of fault, that occur to its' employees acting within the course and scope of employment. The most common types of benefits under part one are indemnity (lost wage) and medical benefits. There are no policy limits on the benefits provided under this part of the workers' compensation policy.

Part 2 – The second part provides employers' liability coverage for actions brought by employees, their family members, relatives and third parties against districts. The individual(s) is required to prove negligence prior to any payment of benefits, which would then be subject to the policy limits chosen and deductible, if any.

Employees who qualify for Workers' Compensation benefits may be offered the opportunity to participate in an Early Return to Work Program. Transition employment need not be in the same job classification or location, but must comply with the treating physician's restrictions and amendments until the participating employee achieves maximum medical recovery.

Workers' compensation coverage for volunteers is optional, not automatically included with the coverage for employees. There will be an additional charge if the district chooses to cover volunteers. Premiums will be affected by the jobs held by volunteers, not only the job being performed by the volunteer for the school district. If volunteers are not covered by the district's workers' compensation, volunteers should be required to sign a waiver prior to performing any duties to limit the liability for the school district.

The table listed below identifies the most common deductible amount for Worker's Compensation Insurance.

<b>Deductible Amount Per Insurance Line</b>			
<b>Insurance</b>	<b>Most Common Deductible</b>	<b>Lowest Deductible</b>	<b>Highest Deductible</b>
Workers' Compensation	\$0	\$0	\$15,000

As stated in the section for General Liability. In an insurance policy, the limit of liability is often expressed as a value per occurrence and a separate value as an aggregate limit. The

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per occurrence coverage means an individual claim limits identify the maximum amounts an insurer will pay per claim. Depending on the insurance line, individual claim limits range from \$500 to \$25 million. The aggregate claim limits identify the maximum amount an insurer will pay for all claims within a policy year. Depending on the insurance line, aggregate claim limits range from \$500 to unlimited. The research report listed below explains the per occurrence and the aggregate claim limits.

<b>Workers' Compensation</b>			
<b>Insurance</b>	<b>Most Common Limit</b>	<b>Lowest Limit</b>	<b>Highest Limit</b>
Individual Claim Limit Per Insurance Line	\$1 million	\$100,000	\$25 million
Aggregate Claim Limit Per Insurance Line	\$1 million	\$500,000	Unlimited

## Section 8: Claims Made Coverage and Retroactive Dates

The existing “Claims Made” difference is that the insurance industry can now decide how far back on coverage it is willing to go for exposures such as professional liability, medical malpractice and other high hazard liability classifications.

General Liability is typically on the “*occurrence form*”. It simply states that whatever carrier was providing coverage at the time of the occurrence was the carrier of record, no matter when the claim was filed. Educators Legal Liability is typically on the “*claims made form*”. It states, “*The carrier of record on the date the claim is filed is the carrier of record.*” However, one major stipulation is the “*retro date.*” The “*retro date*” is the mechanism used to limit the carriers’ exposure. The way it works is this: if a district purchases a “claims made” policy today, the carrier will be responsible for any claim filed during the policy period and if the occurrence of the act causing the claim to be filed is subsequent to the retro date.

**For example, consider a policy with an effective date of July 1, 2010, and your retro date is July 1, 2006. On the date the policy was purchased, the district actually had no coverage. Remember, if the date of the act causing any claim was before the “retro date,” there is no coverage. In the school industry, there will always be long-term exposures. The students are in school for an average of 13-15 years. The law gives individuals until age 19 to file general injury claims or to age 23 for statutory causes of action; unless there are additional circumstances such as failure to report, concealment or special education, which may allow the time to file to continue for many more years.**

The recommendation is that a district should have “*full retro coverage.*” Full retro coverage goes back indefinitely. At a minimum, the retro date should go back 18-20 years. Remember, this is at the insurance company’s discretion. These dates should be monitored by the district on an annual basis.

## **Section 9: Optional Insurance Coverage**

Insurance carriers offer specific types of insurance to address specific situations that have arisen or could arise in school districts. The following optional types of coverage are available to school districts and are not part of any regular insurance policy.

### **(a) Special Events Insurance**

This optional coverage is specifically for events held on school property by outside groups. It is recommended that all districts require a certificate of liability insurance, naming the board as additional insured for the event. This insurance policy should be supplied by the non-school-related group or persons requesting use of school property, when the activity identified as “high-risk” by the superintendent or designee.

### **(b) Student Accident Insurance**

This optional coverage provides coverage to the school district for “*usual and customary charges (U&C)*” for all students while they are en route to, during attendance at and returning from school-sponsored activities. It is suggested that districts consider purchasing usual and customary (U&C) coverage for all students, if it is fiscally sound to do so. **A Student Accident Insurance plan may be adopted in an effort to reduce general liability losses. Participation may result in a reduction in premiums. This is a secondary coverage to family insurance plans to help with co-payments and deductibles and will only pay eligible medical expenses not covered by those plans.**

The KHSAA provides catastrophic limits for athletes, thus leaving primary limits for athletes and primary and catastrophic limits for non-athletes. One pitfall is an optional provision of 24 months to reach the catastrophic limits. This is not recommended.

### **(c) Field Trip Insurance**

This optional coverage is for authorized participants and chaperones of the district for whom accident and sickness is incurred while participating in a scheduled, sponsored and supervised activity of the district. This coverage is particularly important if the district does not purchase student accident insurance for all students.

### **(d) Terrorism Insurance**

This optional coverage is for property losses and liabilities that might occur due to terrorist activities. Consider both foreign and domestic terrorism coverage. This coverage could be offered as a value-added service.

**(e) School Law Enforcement Liability Insurance**

This optional coverage is for bodily injury, personal injury, or property damage that results from law enforcement activities or operations caused by a wrongful act while conducting those activities or operations. Districts employing school resource officers (SRO) or using the volunteer services of a police officer should consider this coverage.

**(f) School Violence Insurance**

This optional coverage protects against school violence and grief events. This coverage can provide after-event counseling, liability defense, and indemnity for employees, a death benefit, punitive damage and employer liability coverage as well as a defense in the event of a lawsuit stemming from a violent event.

**(d) Pollution (environmental liability) Insurance**

This optional coverage protects school districts in cases of environmental liability issues, including but not limited to mercury or oil spills, waste water treatment facilities, above-ground storage tanks, natural resources damages and lead and/or asbestos issues involving third-party entities. Most, if not all, districts have environmental impact (pollution) exposures. In addition, there can be exposure of third parties bringing pollutants onto district property.

**School District Insurance References & Resources**

KDE School Bus Insurance: <http://www.lrc.ky.gov/kar/702/005/030.htm>

This administrative regulation provides the board, the district superintendent and principal with standards necessary to assist in administering the district's pupil transportation programs and to ensure the safe operation of school buses and discipline.

KDE School Facility Insurance: <http://www.lrc.ky.gov/kar/702/003/030.htm>

This administrative regulation establishes requirements for the level of insurance coverage needed for school district buildings and structures.

Kentucky Office of Employment and Training (OET): <http://oet.ky.gov/>

The role of the Kentucky's Office of Employment and Training (OET) is to see that federal and state laws are carried out fully and fairly.

The Kentucky Legislative Research Commission: [www.lrc.ky.gov/lrcpubs/RR347.pdf](http://www.lrc.ky.gov/lrcpubs/RR347.pdf)

Program review and Investigations Committee developed a report that describes the school insurance market in Kentucky, including insurers, insurance agents, and the insurance selection process.

Kentucky Purchasing Cooperatives: [www.kybuy.org](http://www.kybuy.org)

KPC/KEDC Insurance Bid (procurement) Information provided by Melinda N. Lewis, PICK – Independent Insurance Consultant