

Use of School Facilities by Outside Parties

In June 2010, a letter was sent to Superintendants and CEOs of NMPSIA Member agencies by Sammy Quintana, Executive Director. Mr. Quintana informed Members of a statutory amendment (§NMAC, Title 6, Primary and Secondary Education, Chapter 50, Insurance, Part 17, Use of School Facilities by Private Persons) that affects the relationship between public schools in New Mexico and third party users of public school facilities. The change is effective July 1, 2010. A copy of the full language is posted on the NMPSIA website: <http://nmpsia.com> (under Risk Division, Important Documents, Use of Public Facilities by Private Parties).

Under the new law:

- 1. Public schools in New Mexico are not permitted to deny a facility use application because the party has no liability insurance.**
- 2. A school may not require a tenant user to purchase insurance as a condition of use.**
- 3. The public school is not required to extend its own liability insurance to the tenant user. If the tenant user elects to remain uninsured, it is at the user's own risk. The personal assets of the event sponsor may be in jeopardy if a loss occurs.**
- 4. NMPSIA Members (districts, charter schools, other educational entities, etc.) WILL BE insured by NMPSIA for claims which arise as a result of the tenant user's event and for which the Member is held liable.**
- 5. Since July 1, 2010, the NMPSIA Member's liability exposure is statutorily limited to a maximum of \$1,000,000 per occurrence for damages related to tenant user activities. The Act does not set a maximum limit for the sponsor's liability.**
- 6. Public schools may (and should) adopt Facility Use Policy that clarifies all other terms and conditions of facility use. A sample Site Use Agreement is also posted on the NMPSIA website and may be adapted for use by the Member or Member's counsel. Work with your attorney to ensure that your Site Use Policy is appropriately drafted to avoid discrimination complaints.**

To reduce liability, NMPSIA's recommended Site Use Agreement asks NMPSIA Members to obtain waiver agreements from the User's event participants. Waivers help to mitigate potential damages and control premium costs.

Members may continue to recommend (but not mandate) the purchase of TULIP coverage for the User's own protection. We strongly suggest that you inform Tenant User applicants of the continued availability of the TULIP program.

The sample Site Use Agreement offers specific recommendations for safety and other risk management components. The incorporation of safety and risk management processes will limit potential liability for all parties and safeguard future public access.

For questions relating to your obligations under the new law, please contact Sue Bedard, Jackee Munoz, or Janeane Walter at Poms & Associates: (800) 578-8802. For assistance with safety issues associated with Tenant Users, contact Julie Garcia or Ted Maestas at (800) 898-6236.