By Tony Jones

PROTECT the Nest

Reduce your charter school's risks and exposures

Aside from the occasional GEICO or Progressive commercial, there isn't much about insurance people tend to like. Most see insurance as a necessary evil — the purchase of a critical product and service one hopes to never use. Others will gamble on the amount or types of coverage they carry, but failure to carry certain policies can be disastrous for businesses unable to absorb property or personal losses.

As businesses, the stakes are even higher for charter schools. Entrusted with the lives and minds of America's youth, failure to carry mandated insurance requirements or dropping coverages designed to protect a school against reasonable exposures as a cost-cutting measure not only puts a school in tremendous risk in the event of a damaging lawsuit, it places the educational future of students in peril with the prospect of a school closure.

Economic factors appear to have played a role in some schools defaulting on their insurance premium payments, prompting carriers to cancel coverage. For charter schools, ongoing economic woes can compound an existence already made difficult due to lack of funding and annual budgetary shortages and concerns.

"Charter schools are on a tight budget, and insurance expense is a line item that can be taxing on the school," notes John Pagliaro, vice president of property and casualty for Summit Consolidated Group, which offers comprehensive commercial property and casualty insurance plans, including those for charter schools.

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But defaulting on payments can prompt immediate closures. Similarly, strategically cutting necessary coverages can be a dangerous gamble during a time when insurance professionals say exposures actually increase.

Even in the best of times, businesses have become increasingly targeted for liability claims and lawsuits, whether stemming from employees or customers (in this case students and their families). Ongoing economic woes may only exasperate that dynamic from those quick to believe harassment, wrongful termination or discrimination has occurred.

"I don't know if it's a sign of the times with the economy, but when somebody gets laid off, they sometimes think automatically they're discriminated against," says Pagliaro. "You see that more and more now."

In addition, common economic adjustments like downsizing and staff changes could also create a new set of exposures for charter schools, which can have greater turnover than traditional public schools.

"Charters schools, in some cases, may loosen their requirements on hiring practices and wind up hiring people that they would not have hired before," notes Scott Thomason, vice president of Alliant Insurance Services Inc., a specialty insurance brokerage firm that offers a comprehensive package program to charter schools called School Total Advantage Risk Solutions. "[By doing so] you subject yourself more to a liability lawsuit down the road from wrongful practices, not screening the person appropriately, an abuse claim, a harassment claim or even a workers' compensation claim.

"In a downward economy, your risk goes up," he continues. "You should actually be paying more insurance. They can reduce coverages somewhat, but if they're having that much financial trouble, then their risk is actually greater in having a claim."

Dropping a coverage, such as workers' compensation, could leave a charter school extremely vulnerable. "They can afford a small claim or a small deductible, but they can't afford any type of uninsured loss of magnitude," says Thomason.

"In this type of environment with budgetary issues going on, a lot of schools are trying to get by with less," agrees Ryan Edwards, educational institutions risk manager

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for The Mahoney Group, which offers a full line of commercial insurance coverage and risk management services for charter schools. "When you're looking at cost cutting and looking at budgeting, make sure the essential things are not left out."

Common Coverage

Of course essential coverage can be relative and every school's specific risks and exposures can vary, but charter schools should typically consider several coverages, including general liability, educators' legal liability, employment benefits liability, workers' compensation, employment practices liability, directors and officers, sexual abuse and molestation, umbrella policies and property coverages.

Many of these coverages can play a critical role in protecting schools from lawsuits and absorbing damages that could cripple them financially if found at fault. Still, some charter schools wind up operating at risk without some vital coverages, and many start-up schools and new school leaders are surprised by the depth of recommended policies.

"Schools that don't really have much knowledge or past experience are sometimes incredibly shocked at all the different coverages that are needed," says Kyle Kautzmann, insurance broker for EBNY Insurance Services Inc., which offers Charter Insure, a full-service insurance platform exclusively dedicated to charter schools.

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"More experienced charter schools typically understand the regulations regarding what they need in place for insurance," notes Pagliaro. "For newer, start-up charter schools, they don't really understand the insurance coverages, what they need and what they don't need."

"A lot of times the school leaders are former teachers who have been thrown into that role or chosen that role, and they're not familiar with the risk management side of it, how it affects their school and the bottom line," explains Edwards.

"We dissect each school differently and match up the limits based on the size and type of school that it is and what their exposures are," he continues. "Each school has different exposures. We have to match them up to what's most appropriate."

Insurance programs start with general liability as the base, which basically protects a school from lawsuits and claims regarding physical injury or damage to property. Packages typically build up from there. A key endorsement often added to a general liability policy is employment benefits liability, which Pagliaro says covers errors and omissions regarding enrollment to an employee benefit plan. For example, failure to notify an employee that she is eligible to receive employment benefits could trigger a lawsuit.

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Many of the aforementioned coverages are often packaged together by agents and carriers, helping to diffuse some of the confusion. The normal cap on a general liability policy is an aggregate of $2 million, Pagliaro says, with typical limits of $1 million per claim. An umbrella policy can be used to sit over a school's liability limits, including general, auto, workers' compensation and employers' liability. The umbrella provides the school a higher limit if it exhausts its general liability limit and has a large claim.

One of the key coverages for charter schools is employment practices liability, which protects against claims made by employees and covers discrimination, wrongful termination, sexual harassment, minimum wage and overtime. Pagliaro says he has seen an increase in claims in this area during the last decade.

"The insurance will defend and cover the claim costs and the attorney costs," he says, adding that a discrimination claim could be anything regarding gender, age, disability, religion or sex. "I see more and more employment practice liability-related claims."

In addition, educators' legal liability, directors and officers, and errors and omissions are very similar coverages that can be crucial in protecting school leadership and staff. Educators' legal liability is crucial in protecting the school board, while errors and omissions often covers exposures for teachers, says Pagliaro.

Educators' legal liability is sometimes missing from some charter school coverages, which can put board members at personal financial risk.

"Because the board has control of the school and making financial decisions, you can be exposed personally if you make a poor decision, have a wrongful act or an error or omission," explains Pagliaro. "Your personal assets are exposed. You need that coverage for the board members."

Many packages will include directors and officers, errors and omissions, and employment practices liability coverages. Directors and officers sometimes comes into play if the director of a school acts inappropriately in the course of the job, including financial mismanagement or mismanagement of staff, explains Edwards.

"It's important to have a carrier that is broad based enough to cover all of these different risks," he says, explaining that some carriers won't take on certain coverage pieces, such as educator's legal liability, directors and officers, and employment practices liability. If that is the case, a school would have to go to a specialty carrier.

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"There are enough carriers in today's market that will cover those basic coverages that it's best to get it all under one hat," asserts Edwards. "In the event you do have a situation with one of those coverages, you don't have carriers fighting with each other over who is responsible."

Falling Short

Despite insurance requirements and stipulations mandated by states, authorizers, contract obligations and building owners, it is surprising that charter schools sometimes fall short in common coverages like workers' compensation, even if the number of under-insured charters in the sector is relatively low.

"We go in when we're referred to a school and begin to put together their risk management plan, and we see a lot of schools that don't have workers' compensation," notes Edwards. "Not a ton, but I'd say one or two out of every 10 we come across have left that piece off because they didn't realize how important it was or that it was a state mandate. Something like that can destroy you. If you have just one big claim, that can ruin you financially."

Despite steady claims on coverages such as sexual abuse and molestation, educator's legal liability, and directors and officers, these are often the policies missing from charter school insurance plans. Missing coverages usually occur in the first two or three years in a school's history, while it is still trying to find its footing, says Edwards.

"They're more apt to take a risk on some of the coverages," explains Pagliaro. "If they know about the coverages, they're more apt to take a risk because [they think], 'Hey, we're a start-up school, we're growing, we're trying to manage our finances, and maybe we buy that in year two."

"On the property side, they don't buy enough of the right coverage for catastrophes," notes Thomason. "What is your worst case scenario? What if a tornado comes in and wipes out your whole building? You may not buy insurance for that or you may not be able to afford it, but at least you need to understand what your exposure is and work your way down."

Willingly dropping or avoiding key coverages is a strategy that could have disastrous consequences. It's also a slippery slope because start-ups sometimes have more challenges than established schools in getting coverage from some carriers.

Established schools have an academic performance record they can present, as well as a history of coverage and responsible payments. By comparison, start-ups must present a case for the future. For example, a carrier may want to see "at least three years of being in business because they want to see strong financials. They don't want to partner with a school that is not going to be able to pay its premiums," explains Pagliaro. "Insurance companies are very similar to banks. They're underwriting the risk, they're underwriting all financial aspects of the risk, not only what the exposure is."

In order to put their best foot forward, Pagliaro recommends start-ups be as organized as possible when seeking insurance. School leaders should make available the school's petition and business plan, address the school's education philosophy and areas that speak to student outcomes, grade levels served, articles of incorporation as a nonprofit, resumes of board members and school bylaws.

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"You have to have a plan that lays out your school. Anything an underwriter can see," he says. "It's similar to a couple trying to get a mortgage today. The more information you can provide to the underwriter, the more favorable it's going to appear that this school has its ducks in a row."

"If you're a school that's been in business for three or four years and you have a great track record, then that is going to bode well for you in rating," agrees Edwards. "On the flip side, you want to pair with someone who is going to take you at face value starting out and give you the benefit of the doubt because you don't have a history of losses and mismanagement at your school."

As a school grows, it may want to increase coverages or obtain additional coverages, but avoiding certain core policies from the beginning is a poor strategy because the types of risks and exposures charter schools face do not necessarily change with time or added enrollment.

"It actually doesn't change as much as you would think," explains Thomason. "That's because you have the same exposure, whether you have 100 kids, 200 kids or a 1,000. You're still going to have the liabilities associated with what you're doing from day one.

"That is a problem for start-ups because they don't ever budget enough for insurance, and they try to cut some of those coverages that really need to be purchased upfront," he continues. "Whether you're in year one, year 12 or year 20, you're going to have the same kind of exposures."

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