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November 16, 2009

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** Peter B. van Moorsel *PvM*

**RE: STAFF REPORT: NEW MEXICO PUBLIC SCHOOL INSURANCE AUTHORITY  
RULE REGARDING THE USE OF VOLUNTEERS**

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In 2009, the Legislature amended the *Public School Insurance Authority Act* (effective July 1, 2010) to enable the New Mexico Public School Insurance Authority (NMPSIA) to:

- promulgate rules to establish a policy to be followed by participating members relating to the use of volunteers; and
- promulgate rules to establish a policy to be followed by participating members relating to the use of school facilities by private persons.

While NMPSIA was developing this rule, several members of the Legislature, including some members of the Legislative Education Study Committee heard concerns from constituents that the proposed rule was too restrictive, and that a required background check would create an undue burden on community members who wished to volunteer. NMPSIA heard these same concerns at a public hearing regarding the rule, and in response amended the rule to:

- define a regular volunteer as a volunteer who would have unsupervised access to students. A background check is required for regular volunteers; and
- define a spontaneous volunteer as a volunteer who agrees to fill an urgent, temporary need for a school district or charter school. Background checks are not required for spontaneous volunteers.

A letter from NMPSIA addressing the concerns and subsequent rule change attached. Among other attachments, the letter includes the amended rule relating to the use of volunteers.



**Sammy J. Quintana, Esq.**  
Executive Director

**Christy L. Edwards**  
Deputy Director

## **NEW MEXICO PUBLIC SCHOOLS INSURANCE AUTHORITY**

**Office of Executive Director**

*410 Old Taos Highway  
Santa Fe, New Mexico 87501  
1-800-548-3724 or 505 988-2736  
505 983-8670 (fax)*

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- NM School Boards Association
- NM Superintendents Association
- Public Education Commission
- NM School Administrators
- NM National Education Association
- American Federation of Teachers N.M.
- Governor Appointees
- Educational Institutions at Large

October 19, 2009

Frances Ramirez-Maestas  
Director  
Legislative Education Study Committee  
State Capital Complex  
Santa Fe, New Mexico

Re: New Mexico Public Schools Insurance Authority Rules

- Volunteers
- Private Uses of school facilities

Our file # 3195.118

Dear Director Ramirez-Maestas:

You have requested a summary of the action of the Board of Directors, New Mexico Public Schools Insurance Authority at its October 8, 2009 meeting regarding Volunteers and Private Users of School Facilities rules. The Board conducted a Public Hearing on the proposed rules.

The Board heard from staff, the General Counsel and representatives of the East Mountain Charter School and Santa Fe Public Schools. The Board, by unanimous vote, postponed final action on the Private Users rule and amended and adopted the Volunteers rule. The amendment to the Volunteers rule was to 6.50.18.8 C (10) inserting an introductory clause "Other than for school related activities, . . ." The Board also approved my recommendation that we meet with the Superintendents' Association to work out their concern on the Private Users rule (the issue of school personnel presence during private use).

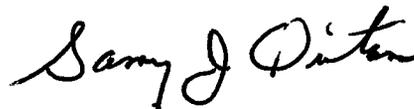
With respect to the Volunteer one, the cause for concern with the initial draft expressed by the two districts and on charter school we heard from was that the rule

would place an undue burden on people who wished to volunteer. They felt that the requirement of a background check would be applied too broadly and include people who either would not have access to students or who would not have an opportunity to go through this check before their services were needed. As a result, we amended the Rule as indicated by the underlined language in 6.50.18.7 (attached Rule P.2). We added a definition of regular volunteer to be only those with unsupervised access to students. This eliminates a large number of persons who do not have such access from all the requirements of the Rule (including of course background checks). We added a definition of spontaneous volunteers which eliminates from the Rule persons who volunteer in urgent temporary capacities (anything imaginable from traffic control to first aid to helping remove and store temporary furniture). These changes addressed all the concerns expressed during the rule-making process.

Attached is the Volunteers rule as adopted. Also attached is a report sent to Representative McCoy by our General Counsel who acted as hearing officer on the rules. Also for your information, attached is the proposed (still pending Board approval) Private Users rule.

Sincerely,

New Mexico Public Schools  
Insurance Authority



Sammy Quintana  
Executive Director

Cc: Jim Romero – [jromero@sfps.info](mailto:jromero@sfps.info)

Attachments: Volunteers Rule as amended  
Private Users Rule  
Report to Representative McCoy

**TITLE 6                    PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 50                INSURANCE**  
**PART 18                    USE OF SCHOOL FACILITIES BY PRIVATE PERSONS**

**6.50.18.1                    ISSUING AGENCY:** New Mexico Public Schools Insurance Authority,  
410 Old Taos Highway, Santa Fe, New Mexico 87501.  
[ \_\_\_\_\_ ]

**6.50.18.2                    SCOPE:** This part applies to all school districts, charter schools and other  
educational entities authorized to participate in the authority's coverage on matters involving risk  
related coverages.  
[ \_\_\_\_\_ ]

**6.50.18.3                    STATUTORY AUTHORITY:** Section 22-29-7, NMSA 1978.  
Authority: duties. The authority shall establish a policy to be followed by participating member  
schools and school districts relating to the use of school facilities by private persons relating only  
to liability and risk issues. This policy shall not affect the rights and responsibilities of local  
school boards to determine how, when and by whom school district facilities are used. The  
policy shall be distributed to participating members and posted upon the authority's web site.  
[ \_\_\_\_\_ ]

**6.50.18.4                    DURATION:** Permanent  
[ \_\_\_\_\_ ]

**6.50.18.5                    EFFECTIVE DATE:** July 1, 2009  
[ \_\_\_\_\_ ]

**6.50.18.6                    OBJECTIVE:** To establish a policy to be followed by participating  
members relating to the use of school facilities by private persons related only to liability and  
risk issues.  
[ \_\_\_\_\_ ]

**6.50.18.7                    DEFINITIONS:** [RESERVED]

**6.50.18.8                    POLICY ON USE OF SCHOOL FACILITIES BY PRIVATE  
PERSONS:**

A. The representative of the requesting group shall contact the facilities  
manager or other designated school official of the desired site regarding the proposed usage  
within a time frame required by the site manager or official. The school or school district shall  
provide the requesting group with a Site Use Agreement which sets forth the terms and  
conditions of use of the premises. Site Use Agreements shall at minimum include a copy of the  
school's safety rules or safety rules provided by the Authority's risk management provider. The  
requesting group must agree to follow the safety rules included with the site use agreement and

also agree to follow the Risk Related Rules contained in Subsection G prior to use of the school facilities. The school facility use shall be conducted in compliance with all federal, state and municipal statutes, ordinances, rules and regulations including those with regard to discrimination. School facilities shall not be used for any unlawful purpose.

**B.** All groups must also agree that the schools will not be liable for injury to the property of the group itself or participants in the group's activities resulting from their participation in the group's activities. Groups and their individual participants shall be required to give waivers of liability and releases for personal injury or property damage on forms provided by the school or the Authority.

**C.** Liability insurance provided through the Authority shall be excess over any valid and collectible insurance carried by any group permitted to use school facilities. Liability insurance provided by the Authority for use of school facilities by private persons is limited to \$1,000,000 per occurrence. Schools or School Districts do not warrant the suitability of the facility or of the facility's contents for the uses intended by the requesting group.

**D.** Commercial groups must provide a copy of a current business license. Commercial groups must inform participants that the activity is not sponsored by the school whose facilities are being used.

**E.** The users of the facilities shall be responsible for reasonable care of the facility and for proper conduct of members of the group. The building manager/facilities manager must ensure that an authorized representative of the schools will be present during proposed use to open the facility, to safeguard it during use and to secure the facility at the end of its use.

**F.** Schools and school districts will make their own arrangements regarding any payments required for use of the facilities, for reimbursement for special services such as setting up tables and chairs, use of school equipment such as projectors or video equipment or abnormal wear and tear on the facilities. All fees should be by check or money order and shall be made payable to the school or school board. It is inappropriate for users of school facilities to pay school employees directly for services in kind or in cash.

**G.** In addition to the safety rules included in the site use agreement, any user of school or school district facilities must agree to the following Liability and Risk Related Rules:

(1) The use of alcohol, illegal drugs and tobacco are prohibited on all school property at all times.

(2) Guns are not permitted on school property except for those in the possession of authorized law enforcement personnel.

(3) Users of the facility shall be responsible for providing security as required by the member school or school district for the type of function they have planned.

(4) Users of swimming pool facilities must have a certified life guard on duty at all times.

(5) For events that involve animals, including dogs, all must be leashed, penned, caged or otherwise properly contained, constrained or under supervision and control at all times. Other animals or pets are prohibited.

(6) Open fires including candles, torches, and bonfires should not be allowed under any circumstances but if the school or school district does allow them, it must only be pursuant to prior approval and permit.

(7) Building exits shall never be blocked for any reason.

(8) Parking shall be in designated areas only.

(9) Every effort shall be made to provide vehicle and pedestrian traffic management in order to insure safe and orderly movement of vehicles and people.

(10) All care is to be taken in the design, placement and construction of booths, displays, viewing stands, platforms, theater sets, temporary stages or any other structures to safeguard the safety of those building, using and disassembling such structures.

(11) Decorations must be fire resistant whenever possible, cover no more than 20% of the wall area and never be placed within close proximity to incendiary sources.

(12) Care must be taken at all times to avoid the creation of tripping hazards or if unavoidable to warn participants of obstacles.

(13) No hazardous materials, including pyrotechnic devises, fireworks, explosives flammable materials or liquids, poisonous materials or plants, strong acids or caustics will be brought onto the premises or used in any way while occupying the premises except with the approval prior to use by the fire marshal or other authority having jurisdiction.

(14) No amusement rides or attractions, including but not limited to, trampolines of any type, enclosed or air supported structures of any type, climbing walls, climbing ropes, bow and arrow shooting activity or equipment or devises related thereto shall be brought onto the premises or used in any way while occupying the premises except with the express permission of school authorities and on proof of insurance of at least \$1,000,000 per occurrence naming the school or school district and the Authority as additional insureds . All such activities must be operated and overseen by persons experienced and if possible certified to do so.

(15) All users of school facilities shall give written notice to the school of any accident resulting in bodily injury or property damage to property of the School occurring on school premises or in any way connected with the use of the school premises within 24 hours of the accident. The notice must include details of the time, place and circumstances of the accident and the names and addresses and phone numbers of any persons witnessing the accident.

(16) If playground equipment is to be used, the user of the facility must provide at least one adult supervisor for every fifteen (15) children.

(17) The user of the facility shall provide signs and markers necessary to inform participants of rules. A list of emergency agencies and phone numbers shall be posted.

(18) Access to school facilities by the users of the facility shall be limited to those areas specified in the Site Use Agreement.

**H.** All users of school facilities must agree to provide prompt and thorough clean-up and removal or storage of all special structures within no more than 24 hours after the end of the event, but in no case later than the beginning of the next school day or if school is out no later than prior to use by school personnel of the area. Users shall ensure that any furniture and equipment moved during the use of the facilities is replaced.

HISTORY of 6.50.17 NMAC [RESERVED]

T:\FRC\MISC\3195118AH.UseOfSchoolFacilities.9-28-09 (JPR09)

REVISED 10.16.2009: to add to C. (10) Other than for school related activities, it . . .

REVISED 10.2.2009: to make proof reading corrections

REVISED 9/29/2009 TO ADD “with unsupervised access to students” to definition of regular volunteers and to delete “pay or other”; to add “regular volunteer” under 6.50.18.8 wherever “volunteer” occurs except in paragraph E; To change “The duty” under the pledge in 6.50.18.8 paragraph C to “It is my duty”; to change definition of “spontaneous volunteer” to delete “pay or other”; in both definitions to put word defined in bold with quotes and change “are” to “means” for consistency with other rules; to change “consideration” to “compensation” in both definitions; in subparagraph B (1) delete “of” in the first line and in subparagraph B (4) add “instruct” and delete “to understand”; in paragraph 6.50.18.8 E delete “need not” and substitute “are” and delete “regarding background checks and training which apply to regular volunteers,”; to add “unless necessary in the defense of self or others” to subparagraph 17; and finally to reformat in accord with Administrative Code rules.

REVISED 9/1/2009 TO REVISE DEFINITION OF VOLUNTEER AND EFFECTIVE DATE

REVISED 8/26/09 TO CHANGE #'s & TITLE & ADD DEFINITIONS AND SECTION 6.18.8 E

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**TITLE 6                    PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 50            INSURANCE**  
**PART 18                 USE OF VOLUNTEERS IN SCHOOLS AND SCHOOL DISTRICTS**

**6.50.18.1                ISSUING AGENCY:** New Mexico Public Schools Insurance Authority.  
[ \_\_\_\_\_ ]

**6.50.18.2                SCOPE:** This part applies to all school districts, charter schools and other educational entities authorized to participate in the authority’s coverage on matters involving risk related coverages.  
[ \_\_\_\_\_ ]

**6.50.18.3                STATUTORY AUTHORITY:** Section 22-29-7, NMSA 1978.  
Authority: duties. The authority shall establish a policy to be followed by participating members relating to the use of volunteers. The policy shall be distributed to participating members and posted upon the authority’s web site.  
[ \_\_\_\_\_ ]

**6.50.18.4                DURATION:** Permanent  
[ \_\_\_\_\_ ]

**6.50.18.5**                    **EFFECTIVE DATE:** [filing date]  
[ \_\_\_\_\_ ]

**6.50.18.6**                    **OBJECTIVE:** To establish a policy to be followed by participating members relating to the use of volunteers.  
[ \_\_\_\_\_ ]

**6.50.18.7**                    **DEFINITIONS:**

**A.**        “Regular volunteers” means those persons with unsupervised access to students, including relatives of students, who commit to serve on a regular basis at a school district, charter school or other educational entity without compensation.

**B.**        “Spontaneous volunteers” means those persons who agree to fill an urgent, temporary need for a school district, charter school or other educational entity without compensation and who are not pre-registered as a regular volunteer.

**6.50.18.8**                    **POLICY FOR REGULAR VOLUNTEERS IN SCHOOLS AND SCHOOL DISTRICTS:**

**A.**        Participating member schools and school districts make extensive use of regular volunteers for many of their programs. In seeking and accepting the voluntary services of qualified, interested individuals, the participating members recognize that they have basic responsibilities to the regular volunteers and well as the students and to themselves.

**B.**        Each participating member shall be responsible for organizing and managing its own regular volunteer program subject to the following rules. Participating member schools, school districts and other educational entities shall have in place policies clearly establishing how and by whom regular volunteers are appointed and the policies at minimum shall require:

**(1)** Interview all prospective regular volunteers and do a background check including, but not limited to any history of drug abuse or drug dealing, domestic violence, DUI offenses, and/or sex crimes;

**(2)** Provide all regular volunteers with a job description, outlining specific duties, time commitment and qualifications for acceptance as a regular volunteer;

**(3)** Provide appropriate training, supervision and evaluation of regular volunteers; and

**(4)** Instruct all regular volunteers to understand that failure to obey the applicable sections of the Code of Ethical Responsibility of the Education Profession and the Standards of Professional Conduct for Educators, Code of New Mexico Rules, Title 6, Chapter 60, Part 9 concerning the obligations of school personnel is grounds for dismissal.

**C.**        Regular volunteers may not be allowed to begin their service until after their duties are explained to them and they have in writing accepted the following volunteer pledge:

**(1)** It is my duty to deal justly and considerately with each student, school employee or other volunteer.

**(2)** It is my duty to share the responsibility for improving educational opportunities for all.

(3) It is my duty to stimulate students to think and learn, but at the same time protect them from harm.

(4) It is my duty to respect confidentiality of student records or information about students, their personal or family life.

(5) It is my duty not to discriminate or to permit discrimination on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion or serious medical condition against any person while on duty as a volunteer.

(6) It is my duty to avoid exploiting or unduly influencing a student into engaging in an illegal or immoral act, or any other behavior that would subject the student to discipline for misconduct, whether or not the student actually engages in the behavior.

(7) It is my duty to avoid giving gifts to any one student unless all students situated similarly receive or are offered gifts of equal value for the same reason.

(8) It is my duty to avoid lending money to students.

(9) It is my duty to avoid having inappropriate contact with any student, whether or not on school property, which includes all forms of sexual touching, sexual relations or romantic relations, any touching which is unwelcome by the student or inappropriate touching given the age, sex and maturity of the student.

(10) Other than for school related activities, it is my duty to avoid giving a ride to a student.

(11) It is my duty not to engage in sexual harassment of students, other volunteers or school employees.

(12) It is my duty not to engage in inappropriate displays of affection, even with consenting adults, while on school property or during school events off premises.

(13) It is my duty not to possess or use tobacco, alcohol or illegal drugs while on school property or during school events off premises.

(14) It is my duty to only use educational facilities and property for educational purposes or purposes for which they are intended consistent with applicable policy, law and regulation.

(15) It is my duty to avoid any violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct when on school property or off campus at a school function.

(16) It is my duty to refrain from using school information technology equipment, hardware, software or internet access for other than a school related purpose.

(17) It is my duty to refrain from striking, assaulting or restraining students unless necessary in the defense of self or others.

(18) It is my duty to refrain from using inflammatory, derogatory or profane language while on school property or while attending a school event off premises.

(19) It is my duty to refrain from bringing or possessing firearms or other weapons on school property except with proper authorization.

(20) It is my duty not to be under the influence of alcohol or illegal drugs on school property or at a school event off premises.

(21) It is my duty to report as appropriate in the circumstances, violations of the pledge by other regular volunteers or employees.

**D.** For the mutual protection of regular volunteers and the participating members, personnel administering regular volunteer programs shall provide a safe place to work and clear project organization or direction, establish and inform regular volunteers of emergency

procedures, ensure that regular volunteers understand that their activities create participating member's liability, and that ethical standards apply to them as well as to regular school employees. Participating member personnel shall inform each regular volunteer in writing of the reserved right to dismiss unsatisfactory regular volunteers and of the established procedures for doing so.

E. Spontaneous volunteers are not subject to these rules, but spontaneous volunteers must be supervised at all times by an employee or regular volunteer of the school district, charter school or other educational entity.

HISTORY of 6.50.17 NMAC [RESERVED]

T:\FRC\MISC\3195118AJ.Use Of Volunteers Rule REVISED 10.16.09 (JPR09)

September 29 2009

Honorable Kathy A. McCoy – [Katrina@swcp.com](mailto:Katrina@swcp.com)  
State Representative, District 22

Re: Volunteers  
Our File No. 3195.118

Dear Kathy:

Thank you for your email and interest in proposed rules regarding volunteers and private users of school facilities. I have received and read about 35 or 40 messages from school personnel around the State, parents, students and volunteers. Over 30 of them from East Mountain Charter Community.

We held a public hearing Thursday, September 24, 2009, on the proposed rules which went from 9 a.m. to 12 noon. A wonderful delegation from your charter school attended (no other school representatives attended). Attached is a list of those who attended. It was delightful to hear from students.

Every one of them articulated their position forcefully, courteously and professionally and without exception were attentive and respectful of any opposing views. What a great experience.

### **On The Substance**

As background, we explained schools, like churches, boy scouts and other organizations where children congregate without parents present are targets for pedophiles. Not just is the Authority concerned about very expensive lawsuits, which have occurred in New Mexico, but about shattered lives of children taken advantage by molesters. The proposed rule is for the purpose of screening out the pedophiles, protecting children, and providing some protection of funds of those vast majority of schools that do a good job in this area. Schools that have tight operations should not see their premium increased exorbitantly because of the few who do not.

We circulated to them the latest drafts of the rules respecting volunteers and the ones respecting private users of school facilities. Both rules are being considered.

### **Private Users Of School Facilities Rule**

The private users of school facilities draft rule drew no comment at the public hearing. We have had only one email on it from another District and we received an email from Mr. Tom Sullivan, Executive Director, NM Coalition of school administrators. He observed that "By and large they are extremely well designed and the Superintendents Association appreciates the work thus far." He had two suggestions:

- That it be left to the local school as to how much advance notice is required of a private group wishing to use school facilities.

I agree, this change is fine. His other concern being the requirement that school personnel be present. The objection being that the Rule requires an "authorized representative" of the schools to be present at the premises used by a private group to open and close the facility and be present during the event. If we are not able to meet with the school administrator's representative to work out this issue before the October 8 review of the proposed rules by the Authority Board, his position on this issue will be available to the Board for its consideration and action.

### **Volunteers Rule**

The Volunteer draft rule drew comment from your constituents (30 or so emails) and 4 from other Districts & Charters. The emails and the in person comments were very helpful. The special interest of East Mountain Charter is quite understandable, since I learned from them that their Charter document requires every parent donate 8 hours a month of their time to the school.

Our focus in drafting the Rule was on developing a rule that would be an impediment to abusers having access to the young and innocent but not be an impediment to volunteers. The input from your East Mountain constituents proved very valuable in assuring our sensitivity to the notion there should not be undue impediment to volunteers in the schools. We thank them for that.

### **Their Suggestions**

Prior to the hearing, I reviewed every email. In response, prior to the hearing, we had prepared changes to:

- Define regular volunteer and spontaneous volunteer (see 6.50.18.7 A&B attached)

- Exempted spontaneous volunteers from the rules (see 6.50.18.8 E attached).

These changes resolved much if not all the concerns of your constituents. At the hearing there were further suggestions from them as follows:

- The definition of regular volunteer should only apply to those who would have "unsupervised access to students."

The Authority risk manager, Julie Garcia and I agreed this was reasonable and we will recommend this change. It would then be up to each school in implementing the rule to determine precisely which volunteer personnel fall in this category and the Authority has neither staff nor funding capability to keep track on a school to school basis of how they do it.

Other suggestions were:

- Adopt the recommendation in the East Mountain emails that the following be adopted as the Authority rule:

"NMPSIA recognizes that our public schools involve volunteers in a vast array of ways. This array contains a great amount of diversity with respect to how much time volunteers interact with students, whether they interact with students at all, and/or to the degree of supervision that these volunteers have by certified school personnel. Because of the diversity in the way in which volunteers are integrated into a school's educational and operational functions, it is impossible to create a set of rules that fit all levels of volunteerism. It is the goal of NMPSIA's policy with regard to volunteers to allow individual schools and school districts to create their own rules and procedures with respect to levels of volunteerism, and to what degree these different levels of volunteers shall be subject to background checks, interviews, training and monitoring. These school or district level rules and procedures shall align with the expectations placed on volunteers within the goals of the school or district's *individualized*, educational programs."

and the proposed rule discussed at the public hearing be discarded. Ms. Garcia and I are not inclined to support this approach because of the need we perceive necessary for a rule that sets minimum standards for all.

Honorable Kathy A. McCoy

September 29 2009

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- Amend the proposed rule to exempt Charter Schools who have a charter mandating parents to provide volunteer service.

Ms. Garcia and I would not support this because it is fairly well agreed that child predators unfortunately come in all forms, from doctors, lawyers, workers, grandparents, uncles, aunts and parents. Because volunteerism is required does not mean the pool does not have a potential predator.

- Amend the proposed rule to allow any school to waiver out. This would involve the applicant filing a request with the Authority, together with its proposed policies, procedures and vetting process and allowing a waiver on approval of the Authority Board.

Ms. Garcia and I do not have a recommendation on this. The Authority Board being made up public school constituent group representatives is in a much better position to decide this essentially "home rule" issue.

Finally, the issue of adoption, rejection, amendment or adoption as amended of these rules will be on the agenda for public hearing by the New Mexico Public Schools Insurance Authority at its meeting beginning 9AM October 8, 2009, Cooperative Educational Services, 4216 Balloon Park Road NE, Albuquerque, New Mexico. This is a public meeting and all are invited to attend and comment.

Very truly yours,

Frank R. Coppler

FRC/jpr

Attachment: Draft Rule/Volunteers  
Draft Rule/Private Users of School Facilities

Cc: Attached list of Public Hearing Attendees  
The Board of Directors of the  
New Mexico Public Schools  
Insurance Authority  
Sammy Quintana, Executive Director  
New Mexico Public Schools  
Insurance Authority