

The Education Trust Board of New Mexico

THE HONORABLE SUSANA MARTINEZ
GOVERNOR OF NEW MEXICO

DR. BARBARA DAMRON, CABINET SECRETARY
NEW MEXICO HIGHER EDUCATION DEPARTMENT



BOARD MEMBERS
DR. BARBARA DAMRON, CHAIR
ROBERT J. DESIDERIO, VICE-CHAIR
DR. JOSE Z. GARCIA
DAVID JANSEN
MARK JARMIE
EXECUTIVE DIRECTOR
THEODORE MILLER

Meeting Minutes of June 20, 2018
1516 Paseo de Peralta, Santa Fe, New Mexico 87501

Board Members in Attendance (by telephone)

Dr. Barbara Damron – Chair
David Jansen – Member
Mark Jarmie – Member

Board Staff in Attendance

Theodore Miller -- Executive Director ETB
Vera Lyons – Board Secretary

Other Individuals in Attendance (by telephone)

Helen Atkeson -- Partner, Hogan Lovells US LLP
Lisa Adelman -- Sommer Udall
Kay Ceserani, Pension Consulting Alliance, LLC
Andrea Feirstein – AKF Consulting
Michelle Nelson -- Court Reporter

APPROVED
Vera Lyons
Board Secretary
8/28/18

1) CALL TO ORDER

Dr. Damron called the meeting to order at 9:00 AM. All board members were in attendance with the exception of Dr. Garcia and Mr. Desiderio. A quorum of three members were present.

2) PUBLIC COMMENT

The Chair called for public comment. There being none, she moved on to the next agenda item.

3) APPROVAL OF AGENDA

Dr. Damron noted the agenda as presented to the Board. She asked if there a motion to approve the agenda. Mr. Jansen so moved and was seconded by Mr. Jarmie. The vote to approve the agenda was unanimous.

4) UPDATE ON EXECUTIVE DIRECTOR POSITION

Dr. Damron gave an update to the board on the exempt executive director position. (At this point Ms. Atkeson joined the meeting.) She noted that the board had approved the hiring of Mr. Miller to fill the new position in pay band 56 with an annual salary of \$140,000 plus the usual fringe benefits for state employment. She observed that the Governor's Office had approved the position and the salary, and that the necessary paperwork was being completed. The effective date of board approval was May 5, 2018, but the actual creation of the position in the state system would probably happen in July.

5) TAX ADVISORY OPINION UPDATE

Dr. Damron then turned to the receipt of a tax advisory letter from the Department of Taxation and Revenue regarding the New Mexico income tax treatment of distributions from the 529 program for the purposes of paying K-12 tuition and transfers to an ABLÉ account. She noted that federal law had been changed to permit such distributions from 529 programs.

Ms. Adelman noted that the Tax Department had confirmed the New Mexico tax treatment of such distributions, basically confirming the views of Sommer Udall in the original ruling request.

Mr. Miller observed that the Tax Department issued an advisory letter and not a formal opinion because the ruling request was general in nature, and did not address the particular situation of an actual taxpayer.

The Tax Department confirmed that previously taken deductions from New Mexico income by a taxpayer would be subject to recapture distributions were taken either for the payment of K-12 tuition or transfer to an ABLÉ account. He noted that the letter only addressed the recapture of amounts previously deducted, and not contribution amounts for which no deduction was taken. He stated that the website and other materials were being updated to reflect the

receipt of the advisory letter.

Mr. Jarmie asked if the website notice could be revised to include a link to the actual letter. Mr. Miller said that he would address this with Esparza and SilverTech.

6) OPPENHEIMER OUTSOURCING PROPOSAL FOR RECORDKEEPING AND ADMINISTRATION

Dr. Damron then addressed the outsourcing proposal presented by OppenheimerFunds at the May 18, 2018 special board meeting, and the draft board resolution against approval of a subcontract for such outsourcing.

She noted that she had discussed the matter with Mr. Desiderio in light of the fact that he could not attend the current board meeting. She indicated that he was not in favor of the proposed outsourcing, and would have delegated his proxy to Dr. Damron if the board had such a procedure. He was concerned in particular about the possibility of putting account owners through two conversions in quick succession, given the relatively short time left on the current contract.

She also noted that Mr. Miller had discussed the matter with Dr. Garcia. Mr. Miller stated that Dr. Garcia was also concerned about a conversion so late in the contract cycle, and the possibility of a second conversion in short order. He was also concerned about the chilling effect on potential bidders for a new contract if they saw the board approve a conversion to a new record keeper and administrator so late in the contract cycle. Mr. Miller said that he had expected Dr. Garcia to attend the current meeting, so he did not ask him how he would vote on the matter.

Mr. Jansen observed that, in his view, Vice Chair Desiderio and Dr. Garcia were opposed to the proposed conversion, and would have supported a resolution to not approve the outsourcing subcontract. Dr. Damron agreed with this statement.

Mr. Jansen stated that he was also opposed to the proposal and prepared to make a motion to not approve of the proposed outsourcing subcontract.

Mr. Jarmie suggested that Mr. Jansen make the motion, and that he would second it, followed by further board discussion of the matter prior to a vote. Mr. Jansen then made a motion that the board approve the draft resolution withholding its approval of a subcontract for outsourcing of 529 recordkeeping and administrative services. Mr. Jarmie seconded the motion.

Mr. Jarmie then suggested a wording change to the effect that the proposed outsourcing “could” cause a second conversion rather than “would” cause a second conversion. He noted that it was possible that OppenheimerFunds could potentially win a new contract on a rebid of the program, and that the second conversion might not occur in that event.

Mr. Jarmie observed that he had considered the OppenheimerFunds proposal in light of the fiduciary responsibility of the board to its account owners. He weighed both the potential advantages and the potential disadvantages to the account owners. His conclusion was that the potential disadvantages outweighed the potential advantages. This was why he was in favor of the proposed resolution.

Dr. Damron asked if there were any other comments or questions from the board members or any of the advisors or counsel present on the call. There being none, she called for a roll call vote on the resolution to deny approval of the OppenheimerFunds proposed subcontract for recordkeeping and administrative services. Mr. Jarmie voted “Aye”. Mr. Jansen voted “Aye”. Dr. Damron voted “Aye”. The vote to approve the resolution was unanimous.

7) ADJOURNMENT

Dr. Damron called for a motion to adjourn. Mr. Jansen so moved. Mr. Jarmie seconded the motion. The vote to adjourn was unanimous. The meeting adjourned at 9:20 AM.