

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 August 28, 2018
1516 Paseo de Peralta, Santa Fe, New Mexico 87501

Board Members in Attendance (by telephone)

Dr. Barbara Damron – Chair
David Jansen – Member
Dr. Jose Garcia – 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
Kurt Sommer -- Sommer Udall
Chris Werner, OppenheimerFunds
Kay Ceserani, Pension Consulting Alliance, LLC
Michelle Nelson -- Court Reporter

APPROVED

Vera Lyons
Board Secretary
10/25/18

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 Mr. Desiderio and Mr. Jarmie. 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 Dr. Garcia. The vote to approve the agenda was unanimous.

4) APPROVAL OF MINUTES

Dr. Damron turned to the drafts of the minutes of the board meetings of May 18, 2018, June 20, 2018 and July 28. She asked if there was a motion to approve the minutes of these three meetings. Dr. Garcia made the motion. Mr. Jansen seconded the motion. The vote to approve the minutes of the three meetings was unanimous.

5) APPROVAL OF AMENDED AND RESTATED PROGRAM MANAGER CONTRACT

Dr. Damron then turned to the proposed amended and restated Program Manager Agreement between OppenheimerFunds and the board. Mr. Miller noted that a draft agreement had been prepared which was now ready for approval by the board. He requested approval of the agreement subject to any further modifications that may be negotiated by the executive director with the advice of counsel.

He asked Ms. Atkeson to summarize the proposed draft agreement. She stated that a number of changes had been made to the contract to accommodate the business changes that had occurred since the original contract was approved in late 2014. This included changes to the program manager fees, the creation of the new marketing “front end” website, the streamlining of the process by which marketing target shortfalls are treated. The draft contract also has both new and revised exhibits, such as a new fee exhibit and a revised reports exhibit that should streamline the process for making future changes without having to amend the body of the agreement. Also, the contract has been revised to recognize the fact that OppenheimerFunds now has only The Private College Fund and the New Mexico program for which it serves as program manager.

Mr. Werner commented that the document had been reviewed by OppenheimerFunds management and internal counsel to assure that the document agreed with the actual business practices in place today. He confirmed that it did so.

Ms. Atkeson noted that the project was to update the contract for current business practices and not to renegotiate other substantive terms.

Dr. Damron asked Mr. Miller if the agreement was still contingent on Oppenheimer’s approval. Mr. Miller stated that the agreement was substantially complete, and that further changes would be minimal.

Oppenheimer's counsel had been on vacation so her final approval was delayed.

Dr. Damron asked what would happen if this were not the case. Mr. Miller stated that he would come back to the board in that event, but that he did not anticipate that this would be the case. He noted that the board's approval required the executive director to act with advice of counsel to the board. If counsel did not agree to an item, he would return to the board for further approval. Ms. Atkeson observed that she expected only minor clean-up work on the agreement.

Dr. Damron called for a motion to grant the executive director authority to execute the amended and restated program manager which sure further changes as he might negotiate subject to the approval of counsel to the board. Mr. Jansen so moved. Dr. Garcia seconded. The vote to approve the motion was unanimous.

6) APPROVAL OF REVISED INVESTMENT POLICY STATEMENT AND MONITORING PROCEDURES AND CRITERIA

Dr. Damron then turned to approval of the revised Investment Policy Statement and Monitoring Procedures and Criteria. She asked Mr. Miller to address these documents.

Mr. Miller reminded the board of its approval of the Statement of Investment Beliefs at the last board meeting. He told the board that the Investment Policy Statement had been revised slightly in several places to reflect the new Statement of Investment Beliefs. He referred to those sections in the document.

He also referred to the board's concern that account owners understand that they alone bear the risk of their investment choices when investing in the 529 program. After consulting with counsel and the board's investment consultant, Mr. Miller noted that stronger disclaimer language had been added to the Investment Policy Statement, because this is one of the documents, along with the 529 Program disclosure document that investors might turn to in evaluating the 529 program investment offerings.

He asked Ms. Atkeson to elaborate on this point. She noted that the 529 disclosure document contains an extended disclosure of the various program investments, and in addition, refers investors to the Investment Policy Statement. The Investment Policy Statement also is posted on the board's website. Therefore the Investment Policy Statement appeared to be the best

choice to incorporate stronger disclaimer language than the Statement of Investment Beliefs.

She observed that the board's counsel as well as the investment consultant had worked through the wording with the executive director. The Statement of Investment Beliefs is a more general document that is used as an internal guide by the board with regard to the overall direction of the program's investment structure.

Mr. Miller then referred the board to the added language, and reviewed it with the members.

Dr. Damron thought that the placement made sense. She asked the other board members for their views. Mr. Jansen stated that the new language looked well written to him.

Dr. Damron then asked council to confirm that there was no need to further approve the Statement of Investment Beliefs based on the action taken at the last meeting. Both Mr. Sommer and Ms. Atkeson concurred.

She then asked Mr. Miller to discuss other changes to the Investment Policy Statement. He reminded the board that there were three areas that changed, the reference to the Statement of Investment Beliefs, the strengthened disclaimer language and finally the revision to the language regarding the use of derivatives in the Underlying Investments of the program.

He referred the board to Subsection E regarding Program Policies. He noted that the current Investment Policy Statement contained an extensive description the use of derivatives in Underlying Investments. He noted that both he and legal counsel had been concerned about the extra requirements regarding derivatives, and whether the language went beyond what is normally legally required when reviewing investments. Ms. Atkeson said that she agreed with this point.

Mr. Miller reviewed the draft language and pointed out the changes that were being recommended for adoption – namely the deletion of the detailed reporting previously required. He noted that the only activity that have ever been detected by the extra review had been the use of bond futures in a couple of the bond funds. The activity was normal practice for a bond fund.

He also noted that some outside managers had occasionally not responded to the added requests, and that there was no practical way to demand a response from them.

Ms. Ceserani noted that the language requires managers to do reporting that they are not normally required to do, and the managers become concerned that they may be making disclosures to an investor that normally make to the investing public in general. She noted that trying to get the information was time consuming, and that there was no practical purpose to be served by having it. She also noted that the New Mexico 529 program was the only one she was aware of with such a requirement.

Mr. Miller then went on to briefly discussing the proposed changes to the Monitoring Procedures and Criteria. He noted that the changes were ministerial in nature, and that counsel advised they could be made by staff without board approval. Examples included the replacement renaming of existing funds, and the replacement of funds in the investment matrices as a result of board action at a meeting.

Since the revised Investment Policy Statement was being approved, he was proposing that the board reapprove the Monitoring Procedures and Criteria at the same time.

Dr Damron asked Mr. Miller if what the board was being asked to do was to approve both documents as presented at the meeting. Mr. Miller confirmed that it was. She asked if there were any comments or questions.

Mr. Jansen asked if in the review process for adding new funds it was considered whether or not the proposed new fund was reviewed for unusual or extensive derivatives activity that could be of concern.

Mr. Miller stated that the process first requires the program manager to review the new Underlying Fund. Then the board's investment consultant, PCA, would also review the recommended fund. Both reviews would include an analysis of the investment methodology used by the fund. If there were significant concern, the fund would in all likelihood be dropped from consideration before even reaching the board. If for some reason the program manager insisted on recommending the fund, PCA would advise the board of its concerns and recommend against approving it.

Mr. Miller stated that he was not aware of any circumstance where the program manager had recommended a fund that had aroused the concern of the investment consultant. He asked for confirmation of this from OppenheimerFunds and from PCA. Both Mr. Werner and Ms. Ceserani agreed. Mr. Werner then went on to note that the review process for derivatives was being simplified, but not eliminated. He noted that OppenheimerFunds reviews

the prospectus and the fund is also reviewed by the Risk Management Group, the OppenheimerFunds portfolio team and then by Mr. Werner personally to make sure the use of derivatives is within the guidelines established by the fund documents.

Mr. Jansen then asked if the proposed language meant that the program manager would be reviewing the funds to ensure that the use of derivatives was in line with the goals of the fund and the investments contained in the fund.

Mr. Werner confirmed that this was the case.

Dr. Damron called for a motion to approve the Investment Policy Statement and the Monitoring Procedures and Criteria as presented to the board. Mr. Jansen made the motion. Dr. Garcia seconded the motion. The vote to approve the motion was unanimous.

7) ADJOURNMENT

Dr. Damron called for a motion to adjourn. Dr. Garcia so moved. Mr. Jansen seconded the motion. The vote to adjourn was unanimous. The meeting adjourned at 9:30 AM.