

APPROVED

The Education Trust Board of New Mexico



THE HONORABLE SUSANA MARTINEZ
GOVERNOR OF NEW MEXICO

DR. JOSÉ Z. GARCIA, CABINET SECRETARY
NEW MEXICO HIGHER EDUCATION DEPARTMENT

BOARD MEMBERS
DR. JOSÉ Z. GARCIA, CHAIRMAN
ROBERT J. DESIDERIO, VICE-CHAIR
ROBBIE HEYMAN, ESQ.
TREVOR SERRAO

**This is the APPROVED January 24, 2014 ETB
meeting minutes and are the official minutes.**

Meeting Minutes of January 24, 2014 1:00 p.m.

New Mexico Higher Education Department
2048 Galisteo St., Santa Fe, NM 87505

Board Members in Attendance

Dr. José Garcia - Chairman
Robert Desiderio – Vice Chairman (via telephone)
Trevor Serrao - Member (via telephone)
Robbie Heyman - Member (via telephone)

Other Individuals in Attendance

Kevin Deiters - Executive Director
Angela Gallegos - Board Secretary
David Mathews - HED Attorney
Helen Atkeson - Partner, Hogan Lovells US LLP (via telephone)
Jeremy Thiessen - Pension Consulting Alliance (via telephone)
Andrea Feirstein - AKF Consulting Group (via telephone)

AGENDA

1) CALL TO ORDER

Vice Chairman Desiderio called the meeting to order at 3:02 p.m. Board Secretary Angela Gallegos called the roll and announced that three of four Board members were present and that a quorum existed. Vice Chairman Desiderio noted for the record that Chairman Garcia was at a legislative meeting.

2) APPROVAL OF AGENDA

Vice Chairman Desiderio called for a motion to approve the agenda. Mr. Serrao made a motion to approve the agenda. Mr. Heyman seconded the motion. The motion was approved by unanimous consent.

3) CHAIRMAN'S REMARKS

Vice Chairman Desiderio said the Chairman has no remarks.

4) EDUCATION TRUST ACT AMENDMENTS - discussion and possible action

Mr. Deiters began his presentation on the Education Trust Act Amendments by explaining that the bill had yet to be officially filed. He directed the Board's attention to the Discussion Draft and asked Ms. Atkeson to brief the Board on the proposed legislation.

Ms. Atkeson stated that the Act had not been amended in a very long time and that some sections of the Act needed to be clarified while other sections were obsolete. She asked for direction from the Board regarding whether the Board wanted to vote to support the proposed legislation.

Vice Chairman Desiderio asked Ms. Atkeson to outline the most important points.

Ms. Atkeson said that the proposed legislation makes a distinction between the Education Trust Fund, composed of the college savings accounts which are held in trust, and the Board's administrative fund which is not held in trust and is composed of administrative fees that are used to pay expenses. The proposal also defines the Board's investment responsibilities for the Education Trust Fund and limits the liability of the Board and the State.

She explained that the proposal authorizes the Board to use its administrative fees for the expenses of administering the program; however, the proposal did not include any language authorizing the Board to award scholarships. The proposal also adds an additional voting member to the Board which would result in five instead of four members and would provide for a quorum with three members.

Ms. Atkeson said there were numerous other changes in the proposal that were meant to clarify or conform to the way that the Plans are being administered. The proposal also includes a provision that would exempt monies in a person's plan account from the claims of creditors of the account owner or the beneficiary.

The proposal also removes all references to the prepaid tuition plan that was closed in 2005.

Mr. Serrao commented on his appreciation for the need for a fifth member and asked the Board if there were any concerns that the executive branch would control the Board because the governor would appoint the cabinet secretary and the other two board members.

Mr. Heyman stated his opinion that, since this is an executive agency, the executive should have control of the agency. He pointed out that the executive had control in the past when it had appointment authority over the State Investment Officer (SIC) who was also a member of the Board until the Act was amended to eliminate the SIC position.

Mr. Serrao also expressed concern about the student position on the Board because he felt that students did not have the experience needed to serve on the Board. He commented that being on the Board had been a great learning experience for him as a student, but that Board should have appointees with experience.

Vice Chairman Desiderio commented that Mr. Heyman had expressed similar concerns about the ability of the student to serve on the Board when the issue was discussed at a previous meeting. Mr. Heyman agreed with Vice Chairman Desiderio comments and but that Mr. Serrao's service has been exceptional.

There was various discussion by the Board about the Board position responsible for representing students and the language regarding the expertise of appointed members.

After discussion, Vice-Chairman Desiderio directed Mr. Deiters to contact the sponsor about not deleting the reference to institutions of higher education in the appointment by the speaker of the house of representatives.

Vice Chairman Desiderio asked Mr. Heyman if he had any other changes to the draft legislation. Mr. Heyman responded that he had no other changes and that he was happy with the draft.

Vice Chairman Desiderio directed the Board's attention to page 5 line 5 of the draft as it pertains to the program administration fund. He said that it was his understanding that this clarifies that the program administration fund is not part of the trust fund. Vice Chairman Desiderio stated that it was important because it was an issue during the litigation and this makes it clear that it is not a part of the trust fund. Ms. Atkeson agreed and said that it is not being held in trust for the account owners.

There was various discussion by the Board and Ms. Atkeson regarding the liability and immunity provisions of the draft.

Following this discussion, Vice Chairman Desiderio suggested that the reference to "any board member" be deleted from the first sentence in Section 7.B. of the draft while keeping the "or an employee" provision since there is nothing in the proposal that protects employees.

Vice Chairman Desiderio asked if the Board should take a formal position to support the proposed legislation. Mr. Heyman responded that he thought the Board should.

Vice Chairman Desiderio called for a motion in support of the proposed legislation.

Mr. Heyman made a motion for the Board to support the legislation amending the Education Trust Act with the changes identified by the Board at the current meeting and to authorize the Board Chairman or Executive Director to register the Board's support for the proposed legislation.

The motion was seconded by Mr. Serrao. A voice vote was taken and the motion was approved unanimously.

5) **INVESTMENT CONSULTANT AGREEMENT AMENDMENT** - discussion and possible action

Vice Chairman Desiderio called on Mr. Deiters to update the Board on the Investment Consultant Agreement Amendment.

Mr. Deiters presented an overview of memorandum of January 24, 2014, entitled *Proposed Amendment to Investment Consultant Contract*.

He stated that this was a follow-up to his October 2, 2014, request for Board authority to issue a request for a proposal for 529 consultant services. The request was tabled at that meeting because Mr. Heyman raised questions about the 529 consultant service provisions in the Board's contract with Pension Consulting Alliance (PCA).

Mr. Deiters said David Mathews would give his legal opinion of the PCA contract and that Jeremy Thiessen and Andrea Feirstein would have an opportunity to explain their interpretation of the contract; however, he stated that he was requesting authority from the Board to extend PCA's contract for one year and to expand the scope of the services in the contract to include a direct role in the development of a request for proposal for program manager and the subsequent evaluation of proposals.

Mr. Deiters said that he was confident with the services provided by PCA and that he found their counsel to be solid and consistent. He expressed his opinion that the presentations made by Mr. Thiessen at the legislation had greatly helped the Board by his ability to provide important factual analysis.

Chairman Garcia joined the meeting at 3:31 p.m. Chairman Garcia asked Vice-Chairman Desiderio to continue to run the meeting.

Mr. Deiters asked the Board to extend the PCA contract by one year because the PCA contract is currently scheduled to expire on June 30, 2015, which is approximately 35 days after the new plan manager contract takes effect. He said that he would like to have more continuity in investment oversight during the period that a new plan manager contract is entered. Mr. Deiters also advised the Board of his intent to request a similar one-year contract extension for the outside counsel contract with Hogan Lovells because it is also scheduled to expire on June 30, 2015.

Mr. Deiters explained that the scope of services was revised to reflect the services actually being provided by PCA pursuant to the Board's Investment Policy Statement and Monitoring Guidelines. The amendment also expands the role of PCA to include an active and direct role in the RFP process.

Provisions were also added to authorize payment for travel and other projects that may not fall under the fixed fee services.

Mr. Deiters called upon Mr. Mathews, Mr. Thiessen, and Ms. Feirstein to discuss the proposed amendment to the contract and expanded services.

Mr. Mathews provided his legal conclusion that PCA had an obligation to assist the Board in all aspects of the RFP process for selecting a program manager. He directed the Board's attention to page 2 of the PCA contract under Scope of Work paragraph N.

Mr. Mathews acknowledged that it was only in that one sentence and that the question has been raised whether the term "assist" covered a much more expanded role in developing the RFP. He said, arguably yes, but he could see the point of view that this provision could be interpreted to require a more limited role by PCA in the process.

Mr. Thiessen said he wanted to reiterate a couple of things. With the review of the contract and the discussions with Mr. Deiters and with Ms. Feirstein, PCA recognizes that the original RFP for investment consultant services includes a requirement to assist the ETB with the RFP process.

He referred to his memorandum of January 23, 2014 which states PCA's intent to assist the ETB with the RFP process. He said that PCA recognizes that the Board had been through a tremendous amount before PCA's arrival and we've covered a lot of ground since PCA's engagement, testimony to the Legislative Investment Committee, and it is important to make sure that the Board has a robust process for the RFP.

Mr. Thiessen clarified that he did not want to get into a legal exercise regarding the word "assist"; but that PCA originally perceived their role as subordinate to the ETB during the RFP process. Under this relationship, the executive director would drive the process with the help of PCA and its affiliate AKF. Clearly the Board and its executive director need a lot more resources committed to the process.

Mr. Thiessen said that he wanted to give Ms. Feirstein a chance to speak from her experience and her expertise from working with numerous other states. It can be an unpredictable process and he believes the Board can benefit from having the benefit of the full fleet of services.

Ms. Feirstein thanked everyone for letting them take the time to walk the Board through the RFP process.

Ms. Feirstein said that AKF has done solicitations for 24 different plans from 19 different states and that they have a fair amount of experience providing various levels of service. Her firm offers a comprehensive solicitation process that begins by working with the client to understand what the client's goals are and really taking time to understand its program manager contract in order to determine if the contract is in line with 529 industry standards.

Ms. Feirstein explained that drafting an RFP was a very time-consuming process. The Board's staff could draft an RFP using another state's RFP as a model; however, they might miss something because the

type of questions that are asked have changed over time. The Board also needs to think about a transition plan and how do we move this program forward.

Ms. Feirstein described the average proposal as being 200 pages long and that it requires a significant amount of time for an experienced team to review and summarize. Her team in New York, consisting of a senior consultant and a senior financial analyst, will thoroughly review the proposals and extract the information that the Board will need to make an informed decision. Additional due diligence may also be needed because there are several new firms competing for plans across the nation and it may be important to determine if they have the ability to support a complex program and a large call center.

AKF would obviously work with the Board's counsel on the contract after the Board selects a firm. Ms. Feirstein said she would bring the benefit of her experience from being involved with 33 different state administrators on these plans and knowing contracts pretty well.

Ms. Feirstein said that as a firm, they have almost never done a RFP process on a retainer and they don't do it because as a small firm they don't want to be at risk. She said that they felt in this case, given the relationship with New Mexico, they have enjoyed their partnership with PCA and felt comfortable that they were to take the risk of working under a fixed-fee contract.

Mr. Deiters explained to the Board that AKF's fixed fee proposal for 529 services was for \$7,500 per quarter from the date the amended PCA contract is approved by the Department of Finance and Administration until the June 30, 2016 contract expiration.

Mr. Deiters asked Ms. Feirstein and Mr. Thiessen if there was a firewall between their firms during the decision making process.

Ms. Feirstein said that she and Mr. Thiessen have worked together on approximately seven RFP processes and that they attempt to complement each other. She said that they look at different figures and they don't compare notes. She explained that PCA doesn't go into depth about operations and that AKF would never try to quantify the asset allocation. AKF will look at proposed investment options to determine if a healthy mix of investment options are being offered in a proposal, but they would not make qualitative judgments about an investment manager. That would be the responsibility of PCA.

Mr. Thiessen agreed with Ms. Feirstein's description. Mr. Thiessen said he solely looks at underlying investment components the funds offer and the portfolio manager teams of those funds.

Vice Chairman Desiderio asked the Board if they have any questions or comments

Mr. Heyman commented that the services described by Ms. Feirstein would be very valuable to the Board and that he would support obtaining those services.

He asked Mr. Mathews if the proposed changes to the term and scope of the contract were permissible under the procurement code. He expressed concern about the extension of the term and the expansion of the contract's scope without a new RFP.

Mr. Mathews said that procurement code excludes the ETB from its provisions relating to professional services contracts. He said that, while the ETB follows the procurement code and other provisions, the Board has an exemption. In conclusion, Mr. Mathews stated that he was comfortable with our position under the procurement code.

Mr. Deiters responded to Mr. Heyman's concerns by stating that the RFP for the investment consultant contract included program manager searches as a required task, and our existing contract included 529 services in the scope of services. Mr. Deiters said that the change in the term should not be a problem given the statutory exemption for the ETB. He also felt confident that the amendment would be approved by the State DFA given the Board's litigation contract amendment with similar amendments was approved earlier in the year.

Mr. Heyman asked Mr. Deiters if he had evaluated the fairness of this increase and the requested compensation compared to other 529 agencies around the country. He also asked if Mr. Deiters had inquired as to how much as to what PCA/AKF might charge other agencies for similar work. Mr. Deiters responded that he had not. He stated that in his previous job in Texas, Ms. Feirstein and her firm were a 529 consultant. Mr. Deiters said that the Higher Education Tuition Board in Texas and Comptroller were very complimentary of Ms. Feirstein's services. Mr. Deiters said he had full confidence and experience in Ms. Feirstein's work and he did not do any analysis of it and frankly, when he heard their offer of the fixed fee, he thought it was very good for the Board. Mr. Heyman said he thought that \$30,000 a year for what Ms. Feirstein described was very reasonable and remarkably helpful for the Board to get those services for that price.

Vice Chairman Desiderio called for a motion to extend the contract for one year. Mr. Serrao made a motion to extend the contract for one year. Mr. Heyman seconded the motion. The motion was approved unanimously.

Vice Chairman Desiderio called for a second motion to amend the contract as stated in the proposal. Chairman Garcia made a motion to amend the contract as stated in the proposal. Mr. Heyman seconded the motion. The motion was approved unanimously.

Vice Chairman Desiderio called for a motion to adjourn the meeting. The motion was made by Mr. Heyman and seconded by Mr. Serrao. Vice Chairman Desiderio adjourned the meeting at 4:02 p.m.

Approved by the Education Trust Board

on this 12th day of March 2014



Angela M. Gallegos, Board Secretary