

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 November 13, 2013 ETB
meeting minutes and are the official minutes.

Meeting Minutes of November 13, 2013 1:00 p.m.

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

APPROVED

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)
Javier Machuca, REDW LLC (via telephone)

AGENDA

1) CALL TO ORDER

Chairman Garcia called the meeting to order at 1:04 p.m. Board Secretary Angela Gallegos called the roll and announced that four of four Board members were present and that a quorum existed.

2) PUBLIC COMMENT

Chairman Garcia called for public comment. There was no public comment.

3) APPROVAL OF AGENDA

4) Chairman Garcia called for a motion to approve the agenda.

Mr. Heyman made a motion to approve the agenda. Vice-Chairman Desiderio seconded the motion. The agenda was approved unanimously.

5) **FY 2013 REDW AUDIT CONTRACT AMENDMENT** – Discussion and possible action – Kevin Deiters, Executive Director

Chairman Garcia called on Kevin Deiters and Javier Machuca to update the Board on the proposed amendment to the FY 2013 financial audit contract with REDW.

Mr. Machuca presented from his letter of November 11, 2013, requesting an increase in the total amount of the FY 2013 audit contract. He informed the Board that REDW needed to change the scope of the contract because the Board added fourteen portfolios to the Scholar's Edge Plan in December 2012. He explained that, although balances for the new portfolios were not significant, REDW had to add each of the new portfolios to the financial statement and perform tests to confirm the cash and market balance of each new portfolio.

Mr. Machuca estimated that each new portfolio would require approximately eight additional hours of work. In total, the additional portfolios would require 110 hours at a cost of \$12,000.

Chairman Garcia asked Mr. Machuca how the portfolios were discovered. Mr. Machuca responded that REDW did not know that the Board had added the portfolios until they received the additional trial balances. Mr. Deiters stated that the new portfolios were added in December 2012 to Scholar's Edge as a part of the portfolio allocator option.

Mr. Deiters asked Mr. Machuca if his request would increase the contract from \$62,060 to \$74,900 including gross receipts tax. Mr. Machuca agreed.

Chairman Garcia called for a motion to increase the amount of the Board's FY 2013 audit contract with REDW from \$62,060 to \$74,900 upon the approval of the State Auditor and the Department of Finance and Administration.

Mr. Heyman asked for clarification that the motion was only to increase the current contract by \$12,000. Mr. Deiters responded that the total cost of the FY 2013 financial audit would increase from \$62,060 to \$74,900, including gross receipts tax.

The motion was made by Vice-Chairman Desiderio and seconded by Mr. Heyman. The motion was approved by unanimous consent.

6) **REVIEW OF THE BOARD'S ADMINISTRATIVE ACCOUNT** – discussion and possible action – Kevin Deiters, Executive Director

Chairman Garcia called on Mr. Deiters to provide the Board with an update of the Board's Administrative Account.

Mr. Deiters stated that, in connection with its work on the FY 2013 financial audit, REDW inquired if the Board's Administrative Account was public money and if it was collateralized as required by state law.

He reminded the Board that the Administrative Account is invested in the Oppenheimer Institutional Money Market Fund, which is an investment fund that is not collateralized.

At the request of Mr. Deiters, Ms. Atkeson provided a summary of her letter of November 11, 2013. She reported on her analysis of the law (Section 6-10-17 NMSA 1978) referenced by the auditor to determine whether amounts on deposit in the Board's Administrative Account qualify as "public money."

Ms. Atkeson explained that there is no distinction in the Education Trust Act (Act) between the account of the Education Trust Fund (ETF) into which Board administrative fees are deposited (Administrative Account) and the account in the ETF into which Plan contributions get deposited and Plan accounts are established.

She stated that there is a basis for the auditor to conclude that the fee revenues received by the Board and deposited to the Administrative Account of the ETF would be found to be public money, under the control of the Board and subject to the state law requirements for deposit and investment. However, the Plan trust account is no longer under the control of the Board once those funds are transferred to Oppenheimer Funds and invested on behalf of and at the direction of the account holders. There would seem to be a strong basis to conclude that the moneys in such ETF account would not be public money subject to the requirements of the law referenced by the auditor.

Mr. Heyman stated that he accepted the idea that amounts on deposit in the Board's Administrative Account are public money. His review of Section 6-10-17 indicated that public money deposited with a bank needs to be collateralized. He pointed out that neither Oppenheimer Funds nor the State Treasury is a bank and that the collateral requirements only apply to bank deposits; however, the New Mexico Constitution requires all public money not needed for its intended purpose to be invested or deposited in an interest bearing security. Mr. Heyman concluded that the Board met this requirement by depositing its administrative funds in the Oppenheimer Institutional Money Market Fund because it was an interest bearing account.

Mr. Heyman stated his preference to select the State Treasurer Local Government Investment Pool (LGIP) should the Board decide to move amounts in its Administrative Account from the Oppenheimer Institutional Money Market Fund. It was his opinion that this would conform to the authorized investment requirements of the Act and meet the collateral requirement.

Vice-Chairman Desiderio said he accepted the fact that Board will need to transfer the Administrative Account to either a bank or the State Treasurer. He asked for the advantages or disadvantages of either option.

Mr. Deiters described his preference for the Wells Fargo account based upon his actual experience with the bank during the distribution of the Core Bond Fund settlement proceeds. He provided an overview of the systems and security measures employed by Wells Fargo and he apologized for not being able to describe the systems provided by the Treasurer's office.

Mr. Heyman asked Mr. Deiters about the rate of return being offered. Mr. Deiters responded that the rates of return were comparable to money market rates with Wells Fargo paying 7 bps and the LGIP paying 11 bps.

Mr. Deiters stated that the State Treasurer would require the Board to adopt a formal resolution establishing an account in the LGIP, and he would also need to confirm that the Board is eligible to participate in the LGIP.

Chairman Garcia called for a motion to accept the Executive Director's recommendation to transfer the Board's Administrative Account from the Oppenheimer Institutional Money Market Fund to a collateralized account in order to comply with Section 6-10-17 NMSA 1978.

The motion was made by Mr. Serrao and seconded by Vice-Chairman Desiderio. The motion was approved by unanimous consent.

Chairman Garcia called for a second motion adopting a resolution required by the State Treasurer's office for entities establishing an account in the LGIP. He read the resolution provided by the State Treasurer's office (attached) and called for a motion.

The motion was made by Mr. Heyman and seconded by Mr. Serrao. The motion was approved by unanimous consent.

Mr. Heyman stated that a third motion was needed in the event that a legal review determines that the Board is not eligible to participate in the LGIP.

Chairman Garcia agreed and called for a motion enabling the staff to move amounts on deposit in the Administrative Account to a collateralized bank depository account in the event that the Board is not eligible to participate in the LGIP.

The motion was made by Mr. Heyman and seconded by Vice-Chairman Desiderio. The motion was approved by unanimous consent.

7) **ADJOURNMENT**

Chairman Garcia called for a motion to adjourn the meeting.

The motion was made by Mr. Serrao and seconded by Vice-Chairman Desiderio.

Chairman Garcia adjourned the meeting at 1:34 p.m.

Approved by the Education Trust Board

December 11, 2013 Meeting

Angela M. Gallegos
Angela M. Gallegos, Board Secretary