

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 December 11, 2013 ETB meeting minutes and are the official minutes.

Meeting Minutes of December 11, 2013 1:00 p.m.

Esparza Advertising
423 Copper Ave. NW
Albuquerque NM 87102

Board Members in Attendance

Dr. José Garcia, Chairman
Robert Desiderio, Vice Chairman
Robbie Heyman, Member (By Phone)

Board Members Absent

Trevor Serrao, Member

Other Individuals in Attendance

Kevin Deiters - Executive Director
Angela Gallegos - Board Secretary
David Mathews - HED Attorney
Helen Atkeson – Partner, Hogan Lovells US LLP
Bill Raynor - OppenheimerFunds
Ken Henry - OppenheimerFunds
Steve Dombrower - OppenheimerFunds
Jeremy Thiessen - Pension Consulting Alliance
Alan Demir, REDW LLC
Del Esparza - Esparza Advertising
Tiffany Hobson - Esparza Advertising
Adam Greenhood – Esparza Advertising
Michelle Tange - Esparza Advertising
Brooke Vigil - Esparza Advertising
Michele Nelson - Court Reporter

AGENDA

1) CALL TO ORDER

Chairman Garcia called the meeting to order at 1:06 p.m. Board Secretary Angela Gallegos called the roll and announced that three of four 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

Chairman Garcia called for a motion to amend the order of the agenda to move the executive session to the end of the meeting.

Vice Chairman Desiderio made a motion to amend the order of the agenda to move the executive session to the end of the meeting. Mr. Heyman seconded the motion. The motion was approved by unanimous consent.

4) MEETING MINUTES OF THE AUGUST 13, 2013 BOARD MEETING

Chairman Garcia called for a motion to approve the minutes of the August 13, 2013 Board meeting.

Vice Chairman Desiderio made a motion to approve the minutes of the August 13, 2013 Board meeting. Mr. Heyman seconded the motion. The motion was approved by unanimous consent.

5) MEETING MINUTES OF THE AUGUST 30, 2013 BOARD MEETING

Chairman Garcia called for a motion to approve the minutes of the August 30, 2013 Board meeting.

Vice Chairman Desiderio made a motion to approve the minutes of the August 30, 2013 Board meeting. Mr. Heyman seconded the motion. The motion was approved by unanimous consent.

6) MEETING MINUTES OF THE SEPTEMBER 4, 2013 BOARD MEETING

Chairman Garcia called for a motion to approve the minutes of the September 4, 2013 Board meeting.

Mr. Heyman requested a revision to the minutes regarding the motion that he made during Agenda Item #4 relating to Ping Lu V. Education Trust Board. He suggested that the minutes should read that the Board authorize litigation counsel to continue in negotiations of the stipulation of settlement with special emphasis on the proposed attachment which the Board has not had an opportunity to see and to report back to the Board when negotiations have resulted in agreed documents for the Board's consideration.

Mr. Heyman made a motion to approve the minutes as amended. Vice Chairman Desiderio seconded the motion. The motion was approved by unanimous consent.

7) MEETING MINUTES OF THE SEPTEMBER 27, 2013 BOARD MEETING

Chairman Garcia called for a motion to approve the minutes of the September 27, 2013 Board meeting.

Vice Chairman Desiderio made a motion to approve the minutes of the September 27, 2013 Board meeting. Mr. Heyman seconded the motion. The motion was approved by unanimous consent.

8) MEETING MINUTES OF THE OCTOBER 2, 2013 BOARD MEETING

Chairman Garcia called for a motion to approve the minutes of the October 2, 2013 Board meeting.

Vice Chairman Desiderio made a motion to approve the minutes of the October 2, 2013 Board meeting. Mr. Heyman seconded the motion. The motion was approved by unanimous consent.

9) MEETING MINUTES OF THE NOVEMBER 13, 2013 BOARD MEETING

Chairman Garcia called for a motion to approve the minutes of the November 13, 2013 Board meeting.

Vice Chairman Desiderio made a motion to approve the minutes of the November 13, 2013 Board meeting. Mr. Heyman seconded the motion. The motion was approved by unanimous consent.

10) MARKETING REPORT – Del Esparza, President and Tiffany Hobson, Vice-President, Esparza Advertising

Chairman Garcia called on Mr. Esparza to report on the marketing program for the college savings plans.

Mr. Esparza introduced his marketing team, Tiffany Hobson, Vice-President, Adam Greenwood, Executive Creative Director, Brooke Vigil, Account Manager, and Michelle Tange, Outreach Coordinator.

Mr. Esparza began his presentation by explaining that his firm, Esparza Advertising, is following a fundamental marketing approach of attempting to build awareness about the college savings plans. Mr. Greenfield provided additional detail about the marketing approach for the college savings program and he played an audio recording of a radio advertisement for The Education Plan.

Ms. Vigil reported that The Education Plan website saw a 39 percent increase in unique users during the two-month period that the radio advertisements ran and that enrollment in the plan increased by 36 percent.

Ms. Vigil and Mr. Greenwood described how the firm was using banner advertisements to target people by age, income, and interest based upon certain key words or phrases in internet searches.

Mr. Esparza credited the success of the banner marketing program to being very strategic in placing on-line advertisements in response to user search histories. He explained that the banner advertisement strategy is based upon over 200 keywords and keyword phrases and an understanding about how people operate. Ms. Hobson described how the click through rate for the TEP banner advertisements (0.21) was much higher than the industry standard click through rate of about 0.05.

Ms. Hobson provided an overview of the direct email marketing campaign directed at people seeking information about the program or to account owners encouraging them to make additional contributions to their accounts. She also spoke about the importance of the community outreach effort in increasing the public's awareness about the program. Ms. Tange said that she attends everything from PTA meetings to the State Fair and has developed over 4,500 qualified leads for people interested in learning more information about the college savings plans.

Chairman Garcia asked Ms. Tange if her approach to marketing the program changes by region or ethnicity. Ms. Tange responded that socioeconomic status was a larger determinant on how she approached the presentation.

Chairman Garcia asked if the program should advertise on Navajo or Spanish language radio. Mr. Esparza stressed the importance of establishing objectives and goals when allocating the Board's advertising budget to obtain the biggest return as possible. He explained that his firm looked into producing a radio spot in Navajo for the Farmington and Gallup area but that it never came together.

Mr. Greenwood described the difficulty of developing the required legal disclosures in other languages. The legal disclaimer for a 60-second spot in English takes 31 seconds. A similar legal disclaimer in Spanish takes 45 seconds.

Chairman Garcia described the growing achievement gap in New Mexico and the need to work with at-risk populations. He stated that he strongly believes that the 529 plans can help "move the needle" on higher education in New Mexico.

Mr. Deiters asked Mr. Esparza to comment further about the absence of television advertisements and if the Board should be advertising on television. Mr. Esparza said that our numbers dropped after the program stopped advertising on television. He pointed out the expense of television and that the Board's budget to Esparza has been flat for several years, but that they would like to develop new advertisements for television in 2014 if additional resources were made available.

Mr. Esparza agreed to provide the Board with a proposal at its next meeting for reintroducing television advertising during FY2014.

11) EDUCATION TRUST BOARD SCHOLARSHIPS – discussion and possible action, Kevin Deiters, Executive Director

Mr. Deiters gave a presentation to the Board on his report entitled *ETB Pathways Scholarship Funding Recommendations for 2014*.

Mr. Deiters stated that, during the 2013 Legislative Session, the Legislative Finance Committee (LFC) requested the ETB to consider efforts to direct its scholarship program toward improving student performance and graduation rates. The LFC indicated that its objective was to consolidate similar State aid programs and to better align the State's student financial aid programs with college-completion goals.

As part of that recommendation, the LFC suggested that the Higher Education Department (HED) allocate the ETB's scholarship contribution of \$500,000 to the Student Incentive Grant Program instead of the ETB Pathways Scholarship program. The HED did not act on that recommendation.

It was also during the same 2013 legislative session that Governor Martinez vetoed a line item in the 2014 Appropriations Bill that proposed to transfer \$500,000 from the ETB to the New Mexico Military Academy and the New Mexico Boys and Girls Club.

Mr. Deiters reminded the Board that it agreed in March 2013 to review the ETB Pathways Scholarship program and that he suspended the program pending the outcome of the study. He convened a committee composed of Del Esparza, Esparza Marketing; Lee Carrillo, Central New Mexico; Brian Malone, UNM; and Rueben Reyes, New Mexico Education Assistance Foundation to review the scholarship program and to hear the concerns of the LFC as expressed by LFC Analyst Tracy Hartzler-Toon.

In his critique of the Pathways Scholarship program, Mr. Deiters reported that the program did not support college savings and he doubted that many students receiving Pathway Scholarships were even aware of the ETB or the college savings program. He also explained how students at research institutions had received over 76 percent of the scholarship funds and that many community college students could not apply for the Pathway Scholarship because they did not have an academic transcript on file with their respective financial aid department.

Mr. Deiters recommended to the Board that it consider establishing three goals for the scholarship program. He asserted that the primary goal of the scholarship program should be to support college savings. The second goal of the program should be to promote college readiness and the importance of college savings in preparing for college. The third and final goal should be to promote college graduation.

To achieve these goals, Mr. Deiters recommended that the Board use a multi-faceted approach to awarding scholarship funds and allocates its own funds to supplement the scholarship funds provided by OppenheimerFunds.

His first recommendation for awarding scholarship funds was to create a scholarship program for beneficiaries in The Education Plan (TEP). In such a program, the Board could host scholarship contests promoting college readiness for TEP beneficiaries. These awards could range between \$250 and \$1,000 and would be deposited into existing college savings accounts under the control of the account owner.

Mr. Deiters' second recommendation for awarding scholarship funds was to create a competitive grant process that could encourage competition among institutions and non-profits for access to ETB scholarship funds.

Under this proposal, the ETB staff would be responsible for developing program rules, reviewing proposals, and nominating applicants to the Board for consideration. In order to receive funding from the ETB, non-profit organizations and higher education institutions would need to actively support college savings in their communities and describe the criteria that they would use to award college savings accounts.

Vice Chairman Desiderio recommended to the Board that it have a more robust discussion in the near future to discuss the integration of potential scholarship money with the Board's goals and the goals of higher education.

Chairman Garcia asked if there were any legal constraints to providing matching funds for people in the college savings plan such as the State anti-donation clause. Mr. Mathews responded that the anti-donation clause was not an issue as long as there is an economic component used in making the award.

Mr. Heyman reminded the Board that, during the development of the scholarship program, it considered distributing the awards using college savings accounts and concerns were raised by their legal counsel about the tax consequences of non-qualified distributions and about potential violations of the state's anti-donation laws.

Mr. Heyman recommended to the Board to revisit this issue at a future meeting because these issues needed to be discussed in more detail. He also requested more information on how the Board could control the scholarship funds to ensure that the awards are either used for college or forfeited.

Vice Chairman Desiderio asked Mr. Deiters about the time frame for the recommendation. Mr. Deiters replied that he would like to have the program ready for the Fall 2014 semester.

Chairman Garcia agreed and commented that at the present time, the distribution of lottery funds is very unequal across the spectrum of universities. He said that it sounds like the scholarship funds have been distributed along the same lines as the lottery scholarship in terms of distribution of funds across institutions. Maybe there might be a case to be made to move in a very different direction, maybe in a two-year sector or some other really different way to reach underserved populations.

Mr. Heyman stated the Board was not in the position to make education policy. He said that he understood the goals of promoting college savings and college readiness but that he didn't know if helping with the graduation rate is the Board's job.

Mr. Deiters said that he would take the Board's comments and review the legal issues raised and bring back another recommendation for the Board to consider.

12) OUTSIDE COUNSEL REPORT – Helen Atkeson, Hogan Lovells US, LLP

Chairman Garcia called on Ms. Atkeson to give the Outside Counsel Report.

Ms. Atkeson directed the Board to her December 3, 2013 *Outside Counsel Report* that provides a summary of the matters that her firm addressed since the August 2013 Board meeting. She advised the Board that the bulk of her time was spent working with OppenheimerFunds and Mr. Deiters in drafting plan disclosures for the investment changes adopted by the Board at the August 13th and October 2nd meetings.

She also confirmed the plan marketing documents have been revised to let new account holders and existing account owners know about the changes in investment options. The Board's investment policies and monitoring guidelines have also been updated.

Ms. Atkeson said she consulted with Mr. Deiters and the Board's litigation counsel regarding the Ping Lu case and reviewed various documents relating to a proposed settlement of the case.

Mr. Heyman suggested to Ms. Atkeson that she cover this part of her report in a separate privileged communication to the Chairman or to the Executive Director because it may involve attorney-client privilege. Ms. Atkeson agreed.

13) PROGRAM MANAGER REPORT

Chairman Garcia called on Mr. Raynor to provide a brief overview of the Plans' marketing report and investment performance report.

a. Marketing Report – Bill Raynor, OppenheimerFunds

Mr. Raynor summarized account and marketing information from the *OFI Private Investments – New Mexico 529 Quarterly Report for the Period Ending September 2013*.

Mr. Raynor said that assets were up by 17 percent in The Education Plan (TEP) through November 30th while the number of accounts were flat year over year. Sales are down about 2 percent. He said December is typically a strong month and that TEP had sales of approximately \$14 million during December 2012.

Mr. Raynor reported that Scholar's Edge (SE) sales were up 3 percent this year and that they are receiving positive feedback from advisors about the new option to custom make a portfolio to fit the needs of their clients.

Mr. Raynor advised the Board that OppenheimerFunds would post the 2013 administrative fee refunds in the accounts of New Mexico residents on January 15, 2014. In response to a question from Mr.

Deiters, Mr. Raynor advised that account owners would receive a statement insert describing the refund.

Mr. Raynor concluded his presentation by offering the Board the opportunity to come to Denver for a site-visit.

Mr. Heyman asked Mr. Raynor to explain why the average balance in TEP is significantly higher than it is in SE, which seemed counterintuitive to him. Mr. Raynor could not provide an explanation and he agreed with Mr. Heyman's comment that it was counterintuitive considering that advisor-sold accounts are significantly larger than direct-sold accounts throughout the industry.

b. Quarterly Investment Performance Report – Ken Henry, OppenheimerFunds

Mr. Ken Henry of OppenheimerFunds provided the Board with a summary of his report entitled *OFI Private Investments – The Education Plan & Scholar's Edge Portfolio Performance Report for the Period Ending September 2013*.

Mr. Henry reported that TEP and SE were recognized by SavingsforCollege.Com for their three-year performance as of the third quarter of 2013. TEP was ranked as the 15th out of 53 direct-sold plans and SE was ranked 9th out of 29 advisor-sold plans.

In regards to the investment and asset allocation changes adopted by the Board at the October 2013 meeting, Mr. Henry advised that transition was on schedule to execute on Friday, December 13th and that the investment options would be available to consumers on Monday, December 16.

Mr. Henry began his presentation by stating that performance was very strong during the quarter, both on an absolute and relative basis. Four out of six blended age-based portfolios in TEP outperformed their benchmark. For SE, three out of six age-based portfolios outperformed their benchmarks. He identified the Oppenheimer Value Fund, the Mainstream Fund, and the International Growth Fund as outperforming their benchmarks during the quarter.

Mr. Henry noted that the Thornburg International Value and the International Bond Fund had underperformed during the quarter. He pointed out that the Thornburg Fund had underperformed its benchmark by 1.7 percent and that it would be covered in greater detail later in the meeting during the discussion of the Watch List.

In concluding his presentation, Mr. Henry provided an update on the investment changes made in December 2012 when the Board added the Senior Floating Rate Fund to the investment lineup by reducing the allocation to two funds, the American Century and Dreyfus Bond Fund, which were in the Barclays Aggregate Index.

He pointed out that the Barclays Aggregate Index had a negative 1.47 percent return during 2013, whereas the Senior Floating Rate Fund had a positive return of 6.04 percent. This is a net difference of

7.5 percent. For the \$120 million invested in the Senior Floating Rate Fund, this is approximately \$9 million more in assets in the college savings accounts.

Mr. Deiters reported to Mr. Henry that he received a call from an account owner complaining that the online system displays only simple returns since inception. Mr. Raynor acknowledged the problem by stating that the investment return displayed on the system does not take into consideration the timing of cash flows. He agreed to review the matter with OppenheimerFunds to determine what it would take to display time-weighted returns.

Mr. Deiters indicated his preference for the display of quarterly, year-to-date, one-year, three-year, and since inception returns.

14) INVESTMENT CONSULTANT QUARTERLY REVIEW – Jeremy Thiessen, Pension Consulting Alliance, Inc.

Chairman Garcia called on Mr. Thiessen to give his review of investment performance of the underlying funds for the third quarter of 2013.

Mr. Thiessen provided the Board with a summary of his December 2013 report entitled *3Q 2013 Investment Monitoring Status Report - New Mexico College Savings Programs*.

Mr. Thiessen began his presentation with a cautionary note about the SavingsforCollege.com rankings. He explained that our program benefited because it had higher allocations to equities when equities were performing well. He warned the Board that it may end-up on the other end of the rankings when equities are not doing as well.

Mr. Thiessen agreed with Mr. Henry's earlier comments about the Senior Floating Rate Fund and suggested that the Fund be considered like a high-yield fund instead of a core fixed-income fund. He reminded the Board that that the Senior Floating Rate Fund was placed in the portfolio as a hedge against a rising interest rate environment.

Chairman Garcia asked Mr. Thiessen why they are called "Senior" and Vice Chairman Desiderio asked if they are secure. Mr. Thiessen explained that Senior Floating Rate Loans are also known as "bank loans" and that they are senior in the capital structure. He also reported that the default rate for senior floating rate funds are very low, and that unlike high-yield funds, shareholders would be paid first in the event of a bankruptcy. He also described how the coupon rates are tied LIBOR and that they will rise during a period of rising interest rates.

Mr. Thiessen began his presentation on TEP investment performance by focusing on the improved performance of the Limited Term Government Fund during the third quarter. The fund's 12-month performance had dipped below the benchmark during the first and second quarters when interest rates increased. The fund is now in the acceptable range and rolling three-year performance is still very good.

Like TEP, the investment performance of SE has not changed. He pointed out that the performance of two equity funds, Oppenheimer Equity Income Y (OYEIX) and the Oppenheimer Limited-Term Government Y (OLTYX), had changed from “positive” to “acceptable” during the quarter. He did not consider these changes to be newsworthy. Mr. Thiessen stated that the international equity portion of the portfolio was doing very well.

15) **WATCH LIST** - discussion and possible action – Jeremy Thiessen, Pension Consulting Alliance, Inc.

Mr. Thiessen provided the Board with an overview of his December 3, 2013, memorandum entitled “*Watch Status*” Update that recommended that the Thornburg International Value Fund be added to the Watch List and that the following six underlying funds remain on the Watch List:

1. Oppenheimer Capital Appreciation Fund (OTCYX);
2. Oppenheimer Value Fund (CGRYX);
3. MainStay MAP Fund (MUBFX);
4. Oppenheimer Main Street Small & Mid-Cap Fund (OPMYX);
5. MainStay High Yield Corporate Bond Fund (MHYIX); and
6. Oppenheimer Rising Dividends Fund (OYRDX)

In his overview of the Watch List, Mr. Thiessen reminded the Board that the Oppenheimer Capital Appreciation Fund would be removed from the program on December 16, 2013.

Mr. Thiessen explained that he was close to recommending the removal of Mainstay Map Fund from the Watch List because it had outperformed its bench mark by 60 bps during the past year. He also expressed confidence in the Oppenheimer Value Fund because of its dramatic improvement since a new management team was brought in during 2013.

Chairman Garcia called for a motion to accept the investment consultant’s recommendation to add Thornburg International Value Fund to the Watch List.

Vice Chairman Desiderio moved to accept the investment consultant’s recommendation to add Thornburg International Value Fund to the Watch List. The motion was seconded by Mr. Heyman. The motion was approved by unanimous consent.

16) **INVESTMENT POLICY STATEMENT AND MONITORING GUIDELINES** - discussion and possible action – Kevin Deiters, Executive Director

Chairman Garcia called on Mr. Deiters to update the Board on the Investment Policy Statement and Monitoring Guidelines.

Mr. Deiters provided the Board with an overview of his December 6, 2013, memorandum entitled *Investment Policy Statement and Monitoring Guideline Amendments*.

Mr. Deiters explained that several changes to the Investment Policy Statement and Monitoring Guidelines were identified during the drafting of the plan disclosures for the December 2013 investment changes.

He recommended that alternative securities be added as a broad asset class in the Permitted Investment section of the Investment Policy Statement to conform with description of investment asset classes in marketing materials provided to consumers.

Two amendments to the Monitoring Guidelines were recommended by Mr. Deiters. The first amendment clarifies the responsibility of Program Manager to identify any administrative fee (wrapper) payable to the Program Manager when a proposed replacement fund is unaffiliated with the Program Manager.

The second amendment directs the Program Manager to notify the manager of any proposed replacement fund of the need to provide the Board with a written 10b-5 certification relating to the information about the replacement fund. This amendment would also require the Program Manager to disclose to the Board the response of each replacement fund manager for the Board's consideration when deciding whether to select such fund as a replacement fund.

Mr. Heyman made a motion to approve the changes to the Investment Policy Statement and Monitoring Guidelines as presented by the Executive Director. Vice Chairman Desiderio seconded the motion. The motion was approved by unanimous consent.

17) EXECUTIVE DIRECTOR'S REPORT – discussion – Kevin Deiters, Executive Director

Chairman Garcia called on Mr. Deiters to give the Executive Director's report.

Mr. Deiters provided the Board with a brief overview of his *Executive Director's Report of December 9, 2013*. He advised the Board that an account had been established in the Local Government Investment Pool that should meet the statutory requirement for collateralized deposits.

Mr. Deiters also thanked OppenheimerFunds for its \$500,000 scholarship contribution for 2013 and he reported to the Board that the settlement payment for Ping Lu had been made.

Mr. Heyman asked Mr. Deiters to update the Board on the status of the proposed RFP for a 529 consultant. Mr. Deiters apologized to the Board for not being prepared to present the RFP issue to the Board at the current meeting. He explained that he and Jeremy Thiessen have discussed the 529 consultant provisions in the Pension Consulting Alliance contract and they are in agreement about the Investment Consultant's role in the RFP; however, the role in of the 529 consultant during the RFP process was not clear.

Vice Chairman Desiderio asked if the RFP for 529 consultant would be brought to the next meeting. Mr. Deiters agreed.

18) EXECUTIVE SESSION – discuss FY 2013 Financial Audit Report

Chairman Garcia called for a motion to move into executive session to discuss the FY 2013 Financial Audit Report

Vice Chairman Desiderio made a motion for the Board to move into executive session to discuss the FY 2013 Financial Audit Report. Mr. Heyman seconded the motion.

A roll call vote was taken and each member voted to move into executive session at 4:03 p.m.

Chairman Garcia called for a motion to move back into open session. Vice Chairman Desiderio made a motion to move back into open session. Mr. Serrao seconded the motion.

A roll call vote was taken and each member voted to end the executive session.

Chairman Garcia announced that the Board had returned to open session at 4:29 p.m. and that no action was taken in executive session.

19) ADJOURNMENT

Chairman Garcia called for a motion to adjourn the meeting.

Vice Chairman Desiderio moved to adjourn the meeting. Mr. Heyman seconded the motion. The motion was approved by unanimous consent.

Chairman Garcia adjourned the meeting at 4:30 p.m.

Approved by the Education Trust Board

on this 12th day of March 2014



Angela M. Gallegos, Board Secretary