

# 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

## Meeting Minutes of March 21, 2013, 1:00 p.m.

New Mexico Higher Education Department  
5201 Eagle Rock NE, Suite 1A  
Albuquerque NM 87113

### Board Members in Attendance

Dr. José Garcia, Chair  
Robert Desiderio, Vice-Chair  
Trevor Serrao, Member  
Robbie Heyman, Member

**APPROVED**

### Other Individuals in Attendance

Kevin Deiters - Executive Director  
Angela Gallegos - Board Secretary  
David Mathews - HED Attorney  
Helen Atkeson, Partner - Hogan Lovells  
Bill Raynor - OppenheimerFunds  
Ken Henry - OppenheimerFunds  
Jeremy Thiessen - Pension Consulting Alliance  
Javier Machuca - REDW, LLC  
John Boyd, Partner - Freedman Boyd  
Kristina Martinez - Rothstein Law Firm  
Yvonne Gonzales - Court Reporter

### **AGENDA**

#### 1) **CALL TO ORDER**

Chairman Garcia called the meeting to order at 1:19 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 approve the agenda.

Mr. Heyman made a motion to approve the agenda. Mr. Serrao seconded the motion. The agenda was approved unanimously.

4) **MEETING MINUTES OF THE DECEMBER 5, 2012 BOARD MEETING**

Chairman Garcia called for a motion to adopt the minutes of the December 5, 2012 Board meeting.

Mr. Heyman made a motion to adopt the minutes of December 5, 2012. Chairman Garcia seconded the motion. Mr. Serrao abstained. The minutes of December 5, 2012, were approved unanimously.

5) **2011-2012-2013 FINANCIAL AUDITS** – discussion and possible action, Javier Machuca, REDW, LLC

Chairman Garcia called on Javier Machuca to update the Board on the 2011-2012-2013 Financial Audits.

Mr. Machuca provided the Board with an update on the Financial Audits and he stated that the FY11 and FY12 audits have been completed, approved and released.

He advised the Board that the FY 2013 audit will be the last audit covered by the proposal submitted by REDW in 2011. Subject to the approval by the Board of a new contract for the FY 2013 audit, Mr. Machuca stated that REDW could begin field testing in September and October and conclude their work in November. He expects to submit the audit to the State Auditor after Thanksgiving.

Mr. Deiters asked Mr. Machuca if the State Auditor had accepted all of the Board's reports. Mr. Machuca responded in the affirmative and told the Board it was current in its required audits.

Chairman Garcia called for a motion to contract with REDW for the 2013 Financial and Compliance Audit in an amount not to exceed \$62,060.

Mr. Heyman asked if the Board was authorizing REDW to act in accordance with the proposal submitted in response to the Board's RFP. Mr. Deiters confirmed that the proposed contract followed the cost proposal submitted by REDW in its response to the RFP and that it is subject to approval by the State Auditor. Mr. Machuca advised the Board that the State auditor could choose to conduct the audit themselves.

Mr. Heyman made a motion to contract with REDW for the 2013 financial and Compliance Audit in an amount not to exceed \$62,060. The motion was seconded by Mr. Serrao. The motion was approved unanimously.

6) **EXECUTIVE SESSION** – discuss program litigation

Mr. Heyman made a motion for the Board to go into Executive Session to discuss the program litigation. The motion was seconded by Mr. Serrao.

Chairman Garcia acknowledged Mr. Desiderio whom just walked into the room and joined the Board.

A roll call vote was taken and all four members voted to adjourn to closed session at 1:32 p.m.

Chairman Garcia announced that the Board had returned to open session at 2:46 p.m. and no action was taken in Executive Session.

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

Chairman Garcia called upon Helen Atkeson for the outside counsel's report.

Ms. Atkeson provided an overview of her March 19, 2013 memorandum covering the services provided by her firm since the December meeting. She reported to the Board about the services provided during the Legislative session and her legal review of updates to The Education Plan and the Scholar's Edge plan descriptions.

Ms. Atkeson also advised that she is reviewing the services provided by the plan manager and its subcontractors in the administration of the fund. She indicated that she also assisted the Executive Director prepare for the upcoming site visit of Oppenheimer Funds. She concluded her presentation with a summary of the intellectual property review being conducted by her firm.

8) **PROGRAM MANAGER REPORT**

a. **Marketing Report** – Bill Raynor, OFIPI

Chairman Garcia called on Mr. Raynor to provide the Marketing Report.

Mr. Raynor summarized account and marketing information in the *OFI Private Investments – New Mexico 529 Quarterly Report for the Period Ending December 31, 2012*. He described how the combined assets of the program exceeded \$2.0 billion at the close of 2012 and that assets were up by six percent while the number of new accounts were relatively flat. Mr. Raynor also described the marketing efforts of the program during the quarter and the increasing appeal of index funds to new account owners in the direct-sold Education Plan.

Mr. Heyman asked Mr. Raynor about the increased interest in index-funds. Mr. Raynor responded that he thought it was because index funds are simpler to understand and are the low-cost option for investors.

Mr. Raynor continued his report by stating that Scholar's Edge was down two percent in the number of accounts while assets had increased by ten percent year-over-year. He explained that Scholar's Edge was a mature program and that Oppenheimer was looking forward to the May 13<sup>th</sup> rollout of the new investment options that were approved by the Board at the December 2012 meeting. He concluded that his firm was excited about the new products and that Oppenheimer was focusing on Scholar's Edge.

Mr. Heyman also asked Mr. Raynor about the number of plans offered by Oppenheimer Funds and the differences in marketing. Mr. Raynor responded that Oppenheimer manages two other advisor-sold plans – a small plan in Texas and the Bright-Start Plan in Illinois.

Mr. Raynor explained that when Oppenheimer took over the Bright Start plan in 2007 from Morgan Stanley Smith Barney, two-thirds of the assets in the plan had been sold by Smith Barney. He explained that the

assets in the plan remained with Smith Barney and those accounts have matured and are being redeemed for qualified expenses.

In response to the differences in marketing, Mr. Raynor stated that new Scholar's Edge 2.0 offerings will be a product differentiator. Oppenheimer will now be able to market the new fund options to advisors who are accustomed to more diversified offerings for their clients.

Mr. Raynor also addressed the fact that Illinois has a reduced payout for advisors whereas Scholar's Edge has the standard mutual fund payout. He concluded that advisors needed to be paid appropriately for their time and that is a strong selling point for Scholar's Edge.

Mr. Desiderio directed Mr. Raynor's attention to pages 10 and 21 which indicated a slight increase in rollovers out of the Education Plan and a slight increase in rollovers into Scholar's Edge.

Mr. Raynor attributed the increase of rollovers into Scholar's Edge to restructuring in the industry, including Morgan Stanley Smith Barney. As a result, assets are transferred as investment advisors move to new firms. He did not have an answer as to why The Education Plan had \$1.7 million rolled out of the plan; however, some of it may simply represent the natural migration of account owners to other states.

**b. Quarterly Investment Performance Report – Ken Henry, OFIPI**

Mr. Ken Henry of Oppenheimer Funds provided the Board with a summary of the *OFI Private Investments – The Education Plan & Scholar's Edge Quarterly Report for the Period Ending December 31, 2012*.

Before beginning his report on fourth quarter performance, Mr. Henry advised that the team managing the Oppenheimer Value Fund had been replaced. He stated that Leighton Spar will serve as the new fund manager and he expects Mr. Spar to restructure the fund within thirty days.

Mr. Henry began his overview of investment performance for the fourth quarter of 2012 with a comment that it was a mixed quarter for the capital markets. Some of the major indices, such as the S & P 500 or the Russell 1000 Growth, saw small declines during the quarter, whereas other major indices, such as the Russell 1000 Value or the Russell 2500, had positive returns. International markets were relatively strong and fixed income was slightly positive.

Mr. Henry reported that all of the portfolios had positive returns for the quarter. He also indicated that portfolios with the greatest equity allocations out-performed their respective benchmarks. For the 13 underlying funds in The Education Plan, three out-performed their benchmark, two under-performed, and the remaining eight funds were in-line with their benchmarks. The Scholar's Edge plan had four underlying funds out-performing, three funds under-performing, and five funds in line with their benchmarks.

**9) AGE-BASED PORTFOLIO PEER REVIEW - Jeremy Thiessen, Pension Consulting Alliance, Inc.**

Chairman Garcia called on Mr. Thiessen to report on the Age-Based Portfolio Peer Review.

Mr. Thiessen provided the Board with a summary of his *4Q 2012 Age-Based Portfolio Peer Comparison* report. The report compares quarterly investment performance of median age-based college savings plans using data from MorningStar for the period ending December 31, 2012. Mr. Thiessen explained

MorningStar's methodology and the difficulty in comparing plans with different age bands and asset allocations.

Mr. Thiessen reported that many of the Scholar's Edge portfolios are performing near or above the median peer over both the 1- and 3- year periods. He also indicated the The Education Plan Blended portfolios and The Education Plan Index portfolios have performed in line or above the median direct-sold portfolios over the latest 1-year period, while blended portfolios have been mixed versus peers over the latest 3-year period.

Mr. Heyman asked Mr. Thiessen if the Board's age-based programs tend to be slightly weighted in favor of equities over the earlier years when compared to other 529 plans. Mr. Thiessen responded in the affirmative and indicated that the national median was around 80 percent.

Ms. Atkeson asked Mr. Thiessen if he felt the Board's allocations were reasonable, even though they are different from the median in other plans. Mr. Thiessen agreed and stated that being 100 percent equity allocated in the earlier years is entirely reasonable.

**10) INVESTMENT CONSULTANT QUARTERLY REVIEW - Jeremy Thiessen, Pension Consulting Alliance, Inc.**

Chairman Garcia called on Mr. Thiessen to report on investment performance for the quarter ending December 31, 2012.

Mr. Thiessen provided a review of his report, "*New Mexico College Savings Program Investment Performance Monitoring Reports*" for the quarter ending December 31, 2012. He provided the Board with an overview of the capital markets and the relative performance of leading indicators.

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

Mr. Thiessen provided the Board with an overview of his "*Watch Status*" Update memorandum dated March 8, 2013. He reported that he had no changes for the watch list and the three funds on the watch list (Oppenheimer Capital Appreciation; Oppenheimer Value Fund; and MainStay MAP Fund) should remain on watch. One fund, the INVESCO Mid Cap fund, was removed from the watch list during the quarter because it was removed from the Scholar's Edge Plan.

Chairman Garcia called for a motion to adopt the investment consultant's recommendation to maintain the Oppenheimer Capital Appreciation Fund, the Oppenheimer Value Fund, and the MainStay MAP Fund on the Watch List.

Mr. Desiderio moved to adopt the investment consultant's recommendation. The motion was seconded by Mr. Heyman and approved unanimously.

**12) INVESTMENT MONITORING PROCEDURES AND CRITERIA UPDATE - Jeremy Thiessen, Pension Consulting Alliance, Inc.**

Chairman Garcia called on Mr. Thiessen to discuss proposed updates to the Board's Investment Monitoring Procedures and Criteria.

Mr. Thiessen presented to the Board the updated Investment Monitoring Procedures and Criteria. Mr. Deiters explained to the Board that the changes should have been presented at the December meeting when the Board approved additional funds for the Scholar's Edge Plan.

Mr. Desiderio moved to adopt the updated Investment Monitoring Procedures and Criteria as presented. The motion was seconded by Mr. Serrao. The motion was approved unanimously.

**13) STATE ADMINISTRATIVE FEES – discussion and possible action, Kevin Deiters, Executive Director**

Chairman Garcia called on Mr. Deiters to discuss a proposal to refund state administrative fees for accounts owned by New Mexico residents.

Mr. Deiters made a presentation to the Board on a proposal to authorize the executive director and the program manager to issue refunds of state administrative fees paid by New Mexico residents with open accounts in the Education Plan and the Scholar's Edge Plan. He explained that the objective of the proposal is to reduce the cost of the college saving plans to New Mexico residents and to encourage more residents to save for college.

Chairman Garcia called for a motion to refund state administrative fees for New Mexico account holders for the period between January 1, 2013 and May 31, 2015.

Mr. Heyman moved to refund state administrative fees for New Mexico account holders. The motion was seconded by Mr. Serrao. The motion was approved unanimously.

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

Chairman Garcia called on Kevin Deiters to discuss Education Trust Board Scholarships Program.

Mr. Deiters provided the Board with an overview of his memorandum of March 20, 2013 on ETB Scholarships. He described a provision in House Bill 2 that directed the Higher Education Department to allocate \$500,000 in funding from the Education Trust Board Pathways Scholarship program to the Student Incentive Grant Program.

Mr. Deiters described the provision of HB2 appropriating \$500,000 from the Board's administrative fund to the New Mexico Military Institute for the General Knowles Scholarship program and \$75,000 for the Boys and Girls State program.

Mr. Deiters also described the concerns raised by the Chairman of the Investment and Pension Committee about the Board awarding scholarships to students that do not save for college.

Mr. Deiters advised the Board that he instructed the Higher Education Department Financial Aid Division to notify each financial aid office that the Board would not award any Pathways Scholarships until further notice is given by the Board.

Mr. Deiters asked the Board to provide direction regarding the Education Pathways Scholarship Program because of issues raised during the 2013 Legislative Session. He asked the Board if it wanted to honor the request of the Legislature to allocate the \$500,000 to the student incentive grant program or if it wanted to do something else with its scholarship funds.

Mr. Desiderio asked Mr. Deiters about the administration of the Student Incentive Grant Program and the criteria used for awarding grants. Mr. Deiters answered that the Higher Education Department administered the grant program and that it used a need and merit based criteria.

Mr. Desiderio stated that the Board spent a fair amount of time developing the Pathways Scholarship and that it needs more time to decide if it should change the program. He explained that the Board did not want a pure need-based program when it designed the Pathways Scholarship program. Mr. Heyman contributed to Mr. Desiderio's description of the Board's intent by stating that the Board wanted to provide scholarships to benefit students going to college anywhere in the country.

Mr. Heyman asked Mr. Deiters if all of the funding for the current fiscal year had been awarded. Mr. Deiters affirmatively responded that the universities had awarded all of the available funding with the majority of the funds allocated for first semester students not covered by the Legislative Lottery Scholarship program.

Chairman Garcia stated that he agreed with Mr. Desiderio that this was not a good time to review a carefully constructed scholarship program. Dr. Garcia stated that the Board needed to do a much better job of informing the legislators about the Education Trust Board while making sure that everyone understands that the Board has a fiduciary relationship to Plan account owners and not to the State of New Mexico. Dr. Garcia concluded that the Board needed to look at the scholarship program and how it uses its assets.

Mr. Serrao asked if the \$575,000 appropriation in HB2 is enacted if the Board would have to eliminate the Pathways Scholarship Program. Mr. Desiderio responded that the Legislature would not be appropriating the specific dollars that Oppenheimer gives us but they would be appropriating from the Board's administrative fund.

Mr. Heyman moved to take no action on the Education Trust Board Scholarships Program. The motion was seconded by Mr. Desiderio. The motion was approved unanimously.

15) **EXECUTIVE DIRECTOR'S REPORT** – Kevin Deiters, Executive Director

Chairman Garcia called on Kevin Deiters to provide the Executive Director's report.

Mr. Deiters summarized his *Executive Director's Report* of March 19, 2013 that detailed administrative expenses, program fees, and the 2013 Legislative Session Report.

16) **OPEN MEETINGS RESOLUTION** – discussion and possible action – David Mathews, HED Attorney

Chairman Garcia called on Mr. Mathews to present the Open Meetings Resolution.

Mr. Mathews briefed the Board on the proposed *Open Meetings Resolution* which is considered at the first Board meeting of the calendar year.

Chairman Garcia called for a motion to adopt the 2013 Policy on the *Open Meetings Resolution* to amend the resolution to require the agenda to be made available to the public at least twenty-four (24) hours in advance of a meeting, or for a longer period as otherwise required by law.

Mr. Heyman moved to adopt the *Open Meetings Resolution* as amended. The motion was seconded by Mr. Serrao. The motion was approved unanimously.

17) **ADJOURNMENT**

Chairman Garcia called for a motion to adjourn the meeting.

Mr. Serrao moved to adjourn the meeting. Mr. Heyman seconded the motion. The motion was approved unanimously.

Chairman Garcia adjourned the meeting at 4:37 p.m.

*Approved by Education Trust Board*

May 22, 2013 Meeting

  
*Angela M. Gallegos, Board Secretary*