

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 July 20, 2012, 1:00 p.m.

New Mexico Higher Education Department
2048 Galisteo, Santa Fe, NM 87113

Board Members in Attendance

Dr. José Garcia, Chair
Robert Desiderio, Vice-Chair (By Phone)
Trevor Serrao, Student Member (Absent)
Robbie Heyman, Member

APPROVED

Other Individuals in Attendance

Kevin Deiters - Executive Director
Angela Gallegos - Board Secretary
David Mathews – HED Attorney
Rosemary Becchi - Partner - Patton Boggs (By Phone)
Joe Goldberg - Freedman Boyd Hollander Goldberg & Ives, P.A.
John Boyd - Freedman Boyd Hollander Goldberg & Ives, P.A.
Ross Burkstaller - OppenheimerFunds
Adrian Ruffle - OppenheimerFunds (By Phone)
Jennifer Sexton - OppenheimerFunds (By Phone)
Kristina Martinez - Rothstein Law Firm
Sigrid Chavez - W & A - Court Reporter

AGENDA

1) **CALL TO ORDER**

Chairman Garcia called the meeting to order at 1:06 p.m. Board Secretary Angela Gallegos called roll call and announced that a quorum was present with only Mr. Serrao being absent.

2) **PUBLIC COMMENT**

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

3) **APPROVAL OF AGENDA**

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

4) **MEETING MINUTES OF MAY 15, 2012**

Mr. Heyman made a motion to adopt the minutes of May 15, 2012. Mr. Desiderio seconded the motion. The minutes of May 15, 2012, were approved unanimously.

5) EXECUTIVE SESSION

Mr. Heyman made a motion for the Board to go into Executive Session to discuss program litigation. The motion was seconded by Mr. Desiderio. A roll call vote was taken and all members voted to adjourn to Executive Session at 1:11 p.m.

Chairman Garcia asked the Board, Legal Counsel and Executive Director to attend Executive Session and he directed Board Secretary Gallegos to escort the audience to the break room.

Chairman Garcia made a motion for the Board to go back into open session at 1:58 p.m. The motion was approved by acclamation.

Chairman Garcia stated that no action was taken in Executive Session.

6) CONSIDERATION OF AND POSSIBLE ACTION ON AN AGREEMENT AMONG THE EDUCATION TRUST BOARD OF NEW MEXICO; AND THE NEW MEXICO EDUCATION PLAN TRUST; AND OPPENHEIMERFUNDS, INC.

Mr. Heyman made a motion to adopt the Indemnification Agreement with modifications to section 8 by adding the word "legislative" in the last sentence and to eliminate section 7 of the proposed agreement. The motion was seconded by Mr. Desiderio. A roll call vote was taken and all three members present voted to adopt the agreement as amended.

7) CONSIDERATION OF AND POSSIBLE ACTION ON OUTSIDE COUNSEL CONTRACT – Kevin Deiters, Executive Director

Chairman Garcia called on Kevin Deiters to present the evaluation committee recommendation.

Mr. Deiters provided an overview of the memorandum of July 10, 2012, regarding the Evaluation Committee Recommendation. He reported that three qualified law firms submitted proposals in response to the March 21, 2012, Request for Proposal for Outside Counsel Services. He reported that the committee evaluated proposals from Hogan Lovells US, LLP, Denver, Colorado; Masterman, Culvert & Tully, Boston, Massachusetts; and Patton Boggs, LLP, Washington, DC.

Mr. Deiters reported that each firm met the minimum requirements and that the Committee conducted interviews and reference checks in support of its recommendation. He stated it was the recommendation of the Evaluation Committee that the Board hire the firm of Hogan Lovells US, LLP, to serve as its outside counsel for a term ending June 30, 2015, in an amount not to exceed \$450,000.

Mr. Heyman made a motion that the Board accept the Evaluation Committee recommendation to hire the firm of Hogan Lovells US, LLP, to serve as the Board's outside counsel for a term ending June 30, 2015, in an amount not to exceed \$450,000, and to authorize staff to take all action necessary to execute the agreement. The motion was seconded by Mr. Desiderio.

Chairman Garcia asked if there was any discussion. There was no discussion.

A roll call vote was taken and all three members present voted to approve the hiring of Hogan Lovells to serve as the Board's outside counsel.

8) CONSIDERATION AND POSSIBLE ACTION REGARDING THE PAYMENT OF MARKETING FEES TO OPPENHEIMER FUNDS – Kevin Deiters, Executive Director

Chairman Garcia called on Kevin Deiters to provide an update on payment of marketing fees to Oppenheimer Funds.

Mr. Deiters provided an overview of his memorandum of July 18, 2012, regarding Marketing Fees. He explained to the Board that the Higher Education Department would not approve the payment of marketing and administrative fee invoices submitted by Oppenheimer Funds because the Board's plan manager agreement was not recognized by the State purchasing system. Mr. Deiters also stated that he had sought the approval of State Controller to pay Oppenheimer but that no decision had been made.

Mr. Deiters requested authority from the Board to pay future marketing expenses on a quarterly basis by netting marketing fees from the administrative fees paid to the Board by Oppenheimer. He also asked for contingent authority to pay Oppenheimer Funds using the same method in the event the State controller does not approve his request to pay Oppenheimer Funds using FY 12 administrative funds

Mr. Desiderio made a motion to accept the staff recommendation to approve the payment of marketing and administrative fees to Oppenheimer Funds. The motion was seconded by Mr. Heyman. The motion was approved unanimously.

9) ADJOURNMENT

Mr. Heyman made a motion to adjourn the meeting. Mr. Desiderio seconded the motion. The motion was approved unanimously.

Chairman Garcia adjourned the meeting at 2:07 p.m.

Approved by Education Trust Board

August 15, 2012 Meeting

Angela M. Gallegos
Angela M. Gallegos, Board Secretary