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May 23, 2008

Keri Faseler Tippins
General Counsel
California Student Aid Commission
10811 International Drive
Rancho Cordova, CA 95670

Dear Ms. Faseler Tippins:

We have reviewed your May 8, 2008, memorandum, the May 1, 2008 letter from Russell Austin, and email correspondence of May 2, 9, and 19, 2008 regarding whether discussions by the EDFUND Board of Directors on the proposed Change in Control Severance Agreement ("Severance Agreement") may be conducted in closed session. Based upon the information and analysis offered in the foregoing documents and our independent expertise in the Bagley-Keene Open Meeting Act, we conclude that the EDFUND Board of Directors is not authorized to conduct closed sessions to discuss the Severance Agreement.

We believe that your memorandum correctly analyzes the scope of the closed session exception for personnel matters with respect to salary considerations, and in particular the applicability of the San Diego Union case. (*San Diego Union v. City Council of the City of San Diego* (1983) 146 Cal.App.3d 947.)

Regarding the proprietary exception contained in Education Code section 69525 subdivision (g)(2), we find your discussion of the statutory language, the legislative history, the surrounding factual circumstances, and the need to harmonize this exception with the general personnel exception of the Bagley-Keene Open Meeting Act to be persuasive.

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Accordingly, we concur with your memorandum, and in view of the lack of authority for the EDFUND Board of Directors to discuss the Severance Agreement in closed session, you may wish to further advise that the EDFUND Board of Directors should publically disclose the substance of all previous closed session discussions on the Severance Agreement to the public as soon as practicable.

Sincerely,

TED PRIM
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

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