

**Action/Information Item**

***California Student Aid Commission***

**Report and Consideration of Recommendations from the Governance and Monitoring Committee Meetings of June 10, 2008 and June 19, 2008**

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At its May 27, 2008 teleconference meeting, the Commission directed the Governance and Monitoring Committee to consider methods for strengthening the Commission's governance over the activities of EDFUND as a result of EDFUND's decision to hold a closed session meeting on the Executive Change-in-Control Severance Agreement.

The Governance and Monitoring Committee met on June 10, 2008 and again on June 19, 2008 to consider the suggestions provided by the Commissioners. The Governance and Monitoring Committee is bringing the following recommendations forward for action by the Commission.

- Request that the Office of the Attorney General's office issue a formal opinion on Bagley-Keene Open Meeting Act issues related to EDFUND's consideration of the Executive Change-In-Control Severance Agreement in closed session.
- Advise EDFUND Board of Directors that failure to act in compliance with the Commission and Attorney General guidance with respect to provisions of the Bagley-Keene will be cause for removal from the EDFUND Board.
- Replace the April 2007 *joint* CSAC and EDFUND policy on meetings with a revised CSAC policy which includes provisions that:
  - ✓ Requires the EDFUND Meeting Notices to be approved by CSAC General Counsel
  - ✓ Authorize CSAC General Counsel to attend all EDFUND closed sessions.
- Revise Governance Policies.
- Seek an amendment to the Education Code that clarifies the oversight role of the Commission compared to the authority given to the Department of Finance under Senate Bill 89 with respect to the actions of the EDFUND Board of Directors/President.

In addition, the following recommendations arising from the May 27, 2008 Commission meeting have already occurred. However, it should be noted that the Office of the Attorney General was not present at the meeting as requested by the Commission in the first item below.

- Schedule a meeting with the Commission and EDFUND Chairs, Department of Finance and Attorney General as recommended by the May 15, 2008 EDFUND Board Resolution.
- Send a correspondence to the EDFUND Board from the Commission stating the Commission's expectations that the EDFUND Board will conduct all discussions of a severance agreement or employment contract in open session and direct EDFUND Board to convene a open session meeting to discuss all issues related to the severance agreement or employment contract that were previously discussed in closed session.

The Governance and Monitoring Committee continues to evaluate the following items:

- Ensure the completion of Governance Monitoring Policy 7: Personnel Practices which requires that "on an annual basis, the Commission will conduct an assessment of the EDFUND Board's performance in conjunction with the statutorily required Annual Report to the Legislature."
- Direct the CSAC Governance and Monitoring Committee to strengthen the policies for nominating, selecting and evaluating EDFUND Board of Directors including current Directors to ensure EDFUND Board of Directors understand and accept the Commission's interpretation and guidelines regarding Bagley-Keene issues.
- Direct the CSAC Personnel, Evaluation and Nomination (PEN) Committee to develop procedures to implement the nomination, selection and evaluation policies.
- Evaluate whether there is another, more effective governance structure.

The Governance and Monitoring Committee has tabled the following suggestions at this time.

- Alter the governance structure of EDFUND by having the California Student Aid Commission serve as the auxiliary's Board of Directors.
- Remove and/or replace one or more EDFUND Board of Directors for failure to act in compliance with the Commission and Attorney General guidance with respect to provisions of the Bagley-Keene.

- Allow the EDFUND Board, with consultation from its legal counsel, to interpret for itself what is proper and permissible for discussion in closed session. The Commission would monitor the Board's actions as part of its oversight responsibilities for ensuring that EDFUND is in full compliance with the Commission's understanding of federal and state statutes and regulations and Commission policy.
- Evaluate whether a different reporting structure of EDFUND management is necessary.

The Governance and Monitoring Committee has decided not to pursue the following suggestions at this time.

- Seek injunctive relief, as authorized by Bagley-Keene in Government Code Section 11130, to stop or prevent what the Commission considers to be violations of the Act.
- Impose a three month moratorium of any decisions or actions by the EDFUND Board.