

Information Item

Governance and Monitoring Committee

Consideration of Methods for Strengthening the Commission's Governance
Over the Activities of EDFUND Arising out of the May 27, 2008
Teleconference Meeting on EDFUND's Decision to Hold a Closed Session
Meeting on the Executive Change-In-Control Severance Agreement

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.

Listed below are suggestions provided at the May 27, 2008 Commission meeting. Also included are additional suggestions received subsequent to the meeting.

Addressing Current Bagley-Keene Open Meeting Act Issues

- 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.
- Request Attorney General's office for 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.
- 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.

EDFUND Board of Directors

- 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.

- 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.
- 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.
- 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.
- Alter the governance structure of EDFUND by having the California Student Aid Commission serve as the auxiliary's Board of Directors.
- Evaluate whether there is another, more effective governance structure.
- Impose a three month moratorium of any decisions or actions by the EDFUND Board.
- 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.

EdFUND Management

- Evaluate whether a different reporting structure of EDFUND management is necessary.

Strengthening the Commission's Oversight Policies and Procedures

- 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.
 - Change/Amend the Education Code and/or the Operating Agreement to strengthen the oversight role of the Commission with respect to the actions of the EDFUND Board of Directors/President.