



**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Financial Statements and Other Information

June 30, 2010, 2009, and 2008

(With Independent Auditors' Report Thereon)

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Table of Contents

	Page
Official Roster	1
Independent Auditors' Report	2
Management's Discussion and Analysis (Unaudited)	4
Financial Statements:	
Balance Sheets	7
Statements of Revenues, Expenses, and Changes in Fund Balance	8
Notes to Financial Statements	9
Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i>	12
Schedule of Findings and Responses	14
Exit Conference	16

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Official Roster

June 30, 2010

BOARD MEMBERS

Dr. Viola E. Florez, Cabinet Secretary – New Mexico Higher Education Department

Robert J. Desiderio, J.D. Vice Chair, Education Trust Board

Todd Frybarger, Member, Education Trust Board

Robbie Heyman, Esq., Member, Education Trust Board

Vacant, Student Member, Education Trust Board

Dawn Trujillo-Sena, ETB Administrative Assistant

Ross Burkstaller VP, Program Administrator, OppenheimerFunds, Inc.



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6565 Americas Parkway NE
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Albuquerque, NM 87190

Independent Auditors' Report

The Board of Directors
The Education Trust Board of New Mexico
and
Mr. Hector Balderas, New Mexico State Auditor:

We have audited the accompanying financial statements of the Administrative Fund (the Fund) of the Education Trust Board of New Mexico (the Board), as of and for the years ended June 30, 2010, 2009, and 2008, respectively, as listed in the table of contents. These financial statements are the responsibility of the Board's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Board's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in note 1(a) to the financial statements, the financial statements of the Fund are not intended to present the financial position, and the changes in financial position of the Board and the State of New Mexico that are attributable to the transactions of the Fund. They do not purport to, and do not, present fairly the overall financial position of the Board as of June 30, 2010, 2009 and 2008 and the changes in its financial position for the years then ended, in conformity with U.S. generally accepted accounting principles.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Administrative Fund of the Education Trust Board of New Mexico as of June 30, 2010, 2009, and 2008, respectively and the changes in financial position for the years then ended, in conformity with U.S. generally accepted accounting principles.

In accordance with *Government Auditing Standards*, we have also issued our report dated March 28, 2012 on our consideration of the Fund's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.



The management's discussion and analysis on pages 4 through 6 is not a required part of the basic financial statements but is supplementary information required by U.S. generally accepted accounting principles. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

KPMG LLP

March 28, 2012

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Management’s Discussion and Analysis (Unaudited)

June 30, 2010, 2009, and 2008

Overview of the Financial Statements and Financial Analysis

The following discussion and analysis provides an overview of the financial position and activities of the Administrative Fund (the Fund) of the Education Trust Board of New Mexico (the Board) as of and for the years ended June 30, 2010, 2009, and 2008. This discussion should be read in conjunction with the accompanying financial statements and notes. Management has prepared the financial statements and the related note disclosures along with this discussion and analysis.

Financial Highlights

Total revenues increased approximately \$104,000 and decreased approximately \$302,000 for the years ended June 30, 2010, 2009, and 2008, respectively.

Fund balance increased approximately \$868,000 and \$1,059,000 during 2010, 2009, and 2008, respectively.

The Statements of Revenues, Expenses, and Changes in Fund Balance

The statements of revenues, expenses, and changes in fund balance report the Fund’s fund balance and how it has changed. Fund balance, the difference between assets and liabilities, is one way to measure the Board’s financial health or position. Nonfinancial factors are also important to consider, including litigation and the vulnerability of the market in which the Fund’s assets are held.

These statements include all assets and liabilities using the modified accrual basis of accounting, which is consistent with the accounting method used by state and local government entities, which measures cash and all other financial assets. All of the audited year’s revenues are recognized when susceptible to accrual and expenses are recorded when the liability is incurred. The following table summarizes the Fund’s assets, liabilities, and fund balance as of June 30, 2010, 2009, and 2008:

Fund balance – End of year (In thousands)

	<u>2010</u>	<u>2009</u>	<u>2008</u>
Assets:			
Cash	\$ 5,684	4,535	3,391
Accounts receivable	138	123	171
Total assets	<u>\$ 5,822</u>	<u>4,658</u>	<u>3,562</u>
Liabilities:			
Accounts payable	\$ 352	56	19
Total liabilities	<u>352</u>	<u>56</u>	<u>19</u>
Fund balance	<u>5,470</u>	<u>4,602</u>	<u>3,543</u>
Total liabilities and fund balance	<u>\$ 5,822</u>	<u>4,658</u>	<u>3,562</u>

For all three years above, total assets and fund balance increased due to the continuing receipt of the administration fee, as outlined in the Program Management Agreement. The deposit is made automatically each month based on the value of accounts managed in the Scholar’sEdge and The Education Plan 529 savings plans.

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Management’s Discussion and Analysis (Unaudited)

June 30, 2010, 2009, and 2008

The following table summarizes the Fund’s revenues, expenses, and changes in fund balance for the years ended June 30, 2010, 2009, and 2008:

Revenues, expenses, and changes in fund balance (In thousands)

	<u>2010</u>	<u>2009</u>	<u>2008</u>
Total revenues	\$ 2,159	2,055	1,753
Total expenses	<u>1,291</u>	<u>996</u>	<u>841</u>
Excess of revenues over expenses	<u>868</u>	<u>1,059</u>	<u>912</u>
Fund balance – beginning of year	<u>4,602</u>	<u>3,543</u>	<u>2,631</u>
Fund balance – end of year	<u>\$ 5,470</u>	<u>4,602</u>	<u>3,543</u>

Total Revenues

The following table summarizes the Fund’s total revenues for the years ended June 30, 2010, 2009, and 2008:

Total revenues (In thousands)

	<u>2010</u>	<u>2009</u>	<u>2008</u>
Fee revenue	\$ 1,658	1,502	1,638
Dividend revenue	1	53	115
Scholarship revenue	<u>500</u>	<u>500</u>	<u>—</u>
Total revenues	<u>\$ 2,159</u>	<u>2,055</u>	<u>1,753</u>

The Fund receives revenue from the 529 Savings Plan program managers to pay its expenses. The revenue received is based in part on the value of the assets under management and is calculated on a monthly basis. The change in fee revenue during the three years is the result of changes in the assets under management during those years.

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Management’s Discussion and Analysis (Unaudited)

June 30, 2010, 2009, and 2008

Total Expenses

The following table summarizes the Fund’s total expenses for the years ended June 30, 2010, 2009, and 2008:

Total expenses (In thousands)			
	2010	2009	2008
Scholarship expense	\$ 500	500	—
Legal fees	496	104	156
Professional services	10	107	400
Marketing	200	200	200
Business development manager	85	85	85
Total operating expenses	\$ 1,291	996	841

Legal fees increased in 2010 due to the increase in legal counsel and fees charged for ongoing litigation. Professional services fees decreased in 2009 and 2010 as a result of the completion of the fiscal years 2005, 2006, and 2007 audits by the end of fiscal year 2008.

Economic Outlook

The Fund’s economic outlook is closely related to the activities and status of the public investment markets. The Fund is dependent upon the automatic fee deposit that is made every month, as a percentage of the net assets that reside in the two 529 savings plans: the Scholar’sEdge and The Education Plan.

The Education Trust Board of New Mexico operates as a self-sustaining state entity and has no direct employees. The State of New Mexico does not appropriate any budgeted amounts for this fund, but the Board is administratively connected to the New Mexico Department of Higher Education (NMHED). The Fund is considered a special revenue fund of the State of New Mexico.

Contacting the Board’s Financial Management

This financial report is designed to provide the public with a general overview of the Fund’s finances. If you have questions about this report contact the Board at 2048 Galisteo, Santa Fe, New Mexico 87505.

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Balance Sheets

June 30, 2010, 2009, and 2008

Assets	2010	2009	2008
Cash and cash equivalents	\$ 5,683,784	4,535,575	3,391,558
Accounts receivable	138,432	122,657	170,454
Total assets	<u>\$ 5,822,216</u>	<u>4,658,232</u>	<u>3,562,012</u>
Liabilities and Fund Balance			
Liabilities:			
Accounts payable	\$ 352,213	56,197	18,988
Total liabilities	352,213	56,197	18,988
Fund balance	<u>5,470,003</u>	<u>4,602,035</u>	<u>3,543,024</u>
Total liabilities and fund balance	<u>\$ 5,822,216</u>	<u>4,658,232</u>	<u>3,562,012</u>
Commitments and contingencies			

See accompanying notes to financial statements.

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Statements of Revenues, Expenses, and Changes
in Fund Balance

Years ended June 30, 2010, 2009, and 2008

	<u>2010</u>	<u>2009</u>	<u>2008</u>
Revenues:			
Fee revenue	\$ 1,658,318	1,502,240	1,637,659
Dividends	1,038	52,951	115,711
Scholarship revenue	500,000	500,000	—
Total revenues	<u>2,159,356</u>	<u>2,055,191</u>	<u>1,753,370</u>
Expenses:			
General government:			
Scholarship expense	500,010	500,000	—
Legal fees	495,866	103,947	155,942
Marketing	200,000	200,000	200,000
Business development manager	85,000	85,000	85,000
Professional services	10,100	107,020	400,239
Travel, conference, and mileage	412	213	—
Total expenses	<u>1,291,388</u>	<u>996,180</u>	<u>841,181</u>
Excess of revenues over expenses	<u>867,968</u>	<u>1,059,011</u>	<u>912,189</u>
Fund balance – beginning of year	<u>4,602,035</u>	<u>3,543,024</u>	<u>2,630,835</u>
Fund balance – end of year	<u>\$ 5,470,003</u>	<u>4,602,035</u>	<u>3,543,024</u>

See accompanying notes to financial statements.

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Notes to Financial Statements

June 30, 2010, 2009 and 2008

(1) Summary of Significant Accounting Policies

(a) Reporting Entity

The Education Trust Board of New Mexico (the Board) is the governing body for New Mexico's 529 college savings plans and the Administrative Fund (the Fund). The Board is administratively attached to the New Mexico Higher Education Department (NMHED). Members are appointed by the Governor, Senate Pro Tem, and Speaker of the House of Representatives. The Board is responsible for making rules and regulations for the development and implementation of the Education Trust Act. The Fund is considered a special revenue fund of the State of New Mexico. The 529 college savings plans are considered fiduciary funds of the State of New Mexico. A separate audit report for the 529 college savings plans can be obtained from the Education Trust Board of New Mexico.

The financial statements presented include the financial position and changes in financial position of the Fund only and are not intended to present the financial position and changes in financial position of the Board or primary government, the State of New Mexico.

(b) Measurement Focus, Basis of Accounting, and Basis of Presentation

The financial statements report detailed information about the Fund's operations. The Fund is a governmental fund, which is used to account for the administrative operations of the Board.

The Fund is accounted for using the flow of current financial resources measurement focus. Only current assets and current liabilities, generally, are included on the balance sheet. Operating statements for this fund presents increases (i.e., revenues and other financing sources) and decreases (i.e., expenditures and other financing uses) in net current assets.

The modified accrual basis of accounting is used by governmental funds. Under the modified accrual basis of accounting, revenues are recognized when susceptible to accrual (i.e., when they become measurable and available to finance current liabilities of the fiscal year). For this purpose, the Board considers revenues to be available if they are collected within 90 days of the end of the current period. Expenses are recorded when the related fund liability is incurred.

Dividends are recognized as they are earned and become measurable and available to pay liabilities of the current period.

(c) Cash Equivalents and Investments

Cash equivalents are defined as highly liquid investments with original maturities of three months or less. The Fund's cash and cash equivalents consist of money market accounts maintained at Oppenheimer, the program manager.

(d) Use of Estimates

The preparation of the financial statements, in accordance with U.S. generally accepted accounting principles, requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Notes to Financial Statements

June 30, 2010, 2009 and 2008

(2) Cash and Cash Equivalents

The Fund's cash and cash equivalents at June 30, 2010, 2009, and 2008 are held in a money market fund in the amount of \$5,683,784, \$4,535,575, and \$3,391,558, respectively, in the name of the Fund and is reported at fair value. The money market fund is invested in short-term high quality, dollar denominated debt instruments issued by the U.S. government, domestic and foreign corporations and financial institutions and other entities.

(a) Credit Risk

The money market fund is subject to credit risk, which is the risk that the issuer of the underlying sectors might not make principal or interest payments on the security when due which could reduce the money market fund's income and fair value. Currently, the Fund does not have a specific policy to limit its exposure to credit risk.

(b) Interest Rate Risk

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of the money market fund. Currently, the Fund does not have a specific policy to limit its exposure to interest rate risk.

(c) Credit Quality Risk

Credit quality risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The Fund is required to disclose credit ratings of its investments in order to assess credit risk. The rating for the money market fund was A-1+ at June 30, 2010.

(3) Accounts Receivable

Accounts receivable reflected in the Fund financial statements represent the administrative fee revenues earned in June but collected in July.

(4) Fee Revenues

During fiscal years 2010, 2009, and 2008, the Fund received revenue from the program managers to pay its expenses. The agreement in place for fiscal year 2008 through fiscal year 2010 provided 10 basis points from Oppenheimer Funds and 1 basis point from Evergreen Investments based on assets under management. The Fund discontinued the agreement with Evergreen Investments on April 17, 2008.

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Notes to Financial Statements

June 30, 2010, 2009 and 2008

(5) Contingencies

The Board has been involved in three lawsuits, one of which is a class action, in which substantial monetary damages are sought. These lawsuits relate to claims arising from an alleged breach of contract and fiduciary duty claimed by participants in the Education Plan and Scholars' Edge 529 savings plans who suffered losses related to the Plan's fixed income assets portfolio during the period of June 25, 2007 through June 25, 2009. The two non-class action suits were consolidated and subsequently dismissed with prejudice by the County of Santa Fe First Judicial District Court on October 28, 2011. The class action plaintiffs claim total losses suffered by the class are in excess of \$175 million. The Board denies any breaches of contract or other duties and also claims that New Mexico law clearly immunizes the Board and its members from any liability in accordance with NMSA 21-21K-3C and has therefore not accrued any amount related to this lawsuit in the accompanying financial statements.



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**Report on Internal Control over Financial Reporting and on Compliance and
Other Matters Based on an Audit of Financial Statements Performed
in Accordance with *Government Auditing Standards***

The Board of Directors
The Education Trust Board of New Mexico
and
Mr. Hector Balderas, New Mexico State Auditor:

We have audited the financial statements of the Administrative Fund (the Fund) of the Education Trust Board of New Mexico (the Board) as of and for the years ended June 30, 2010, 2009, and 2008, and have issued our report thereon dated March 28, 2012. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control over Financial Reporting

In planning and performing our audit, we considered the Board's internal control over financial reporting of the Fund as a basis for designing our auditing procedures for the purpose of expressing an opinion on the financial statements but not for the purpose of expressing an opinion on the effectiveness of the Board's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Board's internal control over financial reporting.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of the internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above. However, we identified certain deficiencies in internal control over financial reporting, described in the accompanying schedule of findings and responses as items 2010-01 and 2010-02 that we consider to be significant deficiencies in internal control over financial reporting. A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. The Board's responses to these findings identified in our audit are described in the accompanying schedule of findings and responses. We did not audit the Board's responses, and accordingly, we express no opinion on them.



Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Fund's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

We noted a matter that is required to be reported under Section 12-6-5 NMSA 1978 that is described in the accompanying schedule of findings and responses as finding 2010-03. The Fund's response to this finding identified in our audit is described in the accompanying schedule of findings and responses. We did not audit the Fund's response, and accordingly, we express no opinion on it.

This report is intended solely for the information and use of the board of directors, management, and the New Mexico State Auditor, and is not intended to be and should not be used by anyone other than these specified parties.

KPMG LLP

March 28, 2012

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Schedule of Findings and Responses

June 30, 2010, 2009, and 2008

2010-01 – Cash Basis Accounting

Condition

The Fund records revenues and expenses using the cash basis of accounting rather than the modified accrual basis of accounting, which is considered an Other Comprehensive Basis of Accounting (OCBOA), but is not consistent with U.S. generally accepted accounting principles (GAAP).

Criteria

Governmental Accounting Standards Board Statement No. 34, *Basic Financial Statements – and Management’s Discussion and Analysis – for State and Local Governments*, requires governmental fund types to utilize the modified accrual basis of accounting.

Cause

Due to the lack of complexity of the Fund’s financial activity, the Fund chose to maintain their records using the cash basis of accounting.

Effect

The Fund’s internal records are not prepared in accordance with GAAP.

Recommendation

We recommend that the Fund convert their internal record-keeping from the cash basis of accounting to the modified accrual basis of accounting.

Fund Response

In the future, the Education Trust Board (ETB) fiscal year operating funds will be managed within the statewide SHARE financial system and will use accrual accounting procedures required by that system.

2010-02 – Internal Controls over Fee Revenue

Condition

All revenue items are recognized and reported in the period in which the cash is physically collected. There is no formal review of the fee revenues received to ensure they are complete and accurate in accordance with the Program Management Agreement between the Board and Oppenheimer Funds, Inc. (OFI).

Criteria

Internal controls over financial reporting are an integral component of an effective financial management system.

Cause

The Fund has relied on the accuracy of OFI’s calculation and distribution of fee revenue in accordance with the Program Management Agreement.

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Schedule of Findings and Responses

June 30, 2010, 2009, and 2008

Effect

It is possible that fee revenue calculated and remitted by OFI is not in accordance with agreements between the Board and OFI and that revenue will be incorrectly reported by the Fund.

Recommendation

We recommend that the Fund perform a monthly recalculation of the fee revenues received from OFI to ensure the completeness and accuracy of the fee revenues in accordance with the effective agreements.

Fund Response

Upon accession to his/her position before the end of December 2011, the ETB's Executive Director will establish and implement fee revenue internal controls as specified.

2010-03 – Timely Reporting

Condition

The annual financial audit reporting package for the fiscal years ended June 30, 2008, 2009, and 2010 was not submitted to the Office of the State Auditor by the required due date of December 31, 2010. This was due to the audit contract not being awarded until August 10, 2010, which was past the due date for the fiscal years 2008 and 2009 audits.

Criteria

Per Subsection A of 2.2.2.9 NMAC, state agency audit reports are due no later than 60 days after the Financial Control Division of the Department of Finance and Administration provides the State Auditor with notice that the agency's books and records are ready and available for audit; however, the deadline cannot exceed beyond December 15.

Cause

The decision to require an audit of the Fund was not made until 2010.

Effect

The Fund is not in compliance with the reporting deadlines established by the State Auditor of New Mexico.

Recommendation

We recommend that the audit contracting process be completed prior to the end of the fiscal year in order to allow sufficient time to complete the audit in accordance with the NMAC reporting deadlines.

Fund Response

Upon accession to his/her position before the end of December 2011, the ETB's Executive Director will establish and implement timely reporting of financial information as specified.

**THE EDUCATION TRUST BOARD
OF NEW MEXICO – ADMINISTRATIVE FUND**

Exit Conference

June 30, 2010, 2009, and 2008

Exit Conference

An exit conference was conducted on February 28, 2012 with the board of directors and members of management of the Board. During this meeting, the contents of this report were discussed with the following:

Robert Desiderio	Board Vice Chair
Kevin Deiters	Executive Director
Cynthia Reinhart	Partner, KPMG LLP
Suzette Longfellow	Senior Manager, KPMG LLP

KPMG assisted management in drafting the financial statements and notes. The Fund reviewed, approved, and accepted responsibility for the financial statements and notes.