

Meeting No. 1,141

THE MINUTES OF THE BOARD OF REGENTS
OF
THE UNIVERSITY OF TEXAS SYSTEM

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October 30, 2015

Austin, Texas

MEETING NO. 1,141

FRIDAY, OCTOBER 30, 2015.--The members of the Board of Regents of The University of Texas System convened in a special called meeting via telephone conference call at 2:03 p.m. on Friday, October 30, 2015, in the Board Room, Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin, Texas, with the following participation:

ATTENDANCE.--

Present

Chairman Foster (in person)
Vice Chairman Hicks
Vice Chairman Hildebrand
Regent Aliseda
Regent Beck
Regent Hall
Regent Pejovich
Regent Tucker
Regent Drake, Student Regent, nonvoting

Absent

Regent Cranberg

In accordance with a notice being duly posted with the Secretary of State and there being a quorum present, Chairman Foster called the meeting to order in open session.

RECESS TO EXECUTIVE SESSION.--At 2:04 p.m., the Board recessed to convene in Executive Session pursuant to *Texas Government Code* Sections 551.071 and 551.074 to consider the matters listed on the Executive Session agenda.

RECONVENE IN OPEN SESSION.--At 3:25 p.m., the Board reconvened in open session for action on matters discussed in Executive Session and to consider the following agenda items.

1. U. T. System: Discussion and appropriate action regarding individual personnel matters relating to appointment, employment, evaluation, compensation, assignment, and duties of presidents (academic and health institutions), U. T. System Administration officers (Executive Vice Chancellors and Vice Chancellors), other officers reporting directly to the Board (Chancellor, General Counsel to the Board, and Chief Audit Executive), members of the Board of Regents, and U. T. System and institutional employees

No action was taken on this item.

2a. U. T. System Board of Regents: Discussion with Counsel on pending legal issues

No action was taken on this item.

2b. U. T. Austin: Discussion of legal issues related to current and proposed athletics sponsorship and licensing agreements with NIKE USA, Inc.

See Item 1 below for action taken on a related item in Open Session.

2c. U. T. Austin: Discussion of legal issues related to terms of contract with Bevilacqua Helfant Ventures, LLC (BHV) for consulting services

No action was taken on this item.

AGENDA ITEMS

1. U. T. Austin: Approval of athletics sponsorship and licensing agreement with NIKE USA, Inc.

The University of Texas at Austin President Fenves outlined the proposed athletics sponsorship and licensing agreement with NIKE USA, Inc.

President Fenves recommended the contract and explained the history of the exclusive arrangement with NIKE and the U. T. Austin Athletics Department since 2000. He stated the current agreement expires on July 1, 2016. NIKE has sponsored intercollegiate athletic activities and is licensed to produce athletic apparel, equipment, and footwear with U. T. Austin marks, logos, and colors. President Fenves requested consideration and approval of an extension of the relationship over the next 15 years with a total value over \$250,000,000, including cash, apparel, uniforms, footwear and other products, internships for students, funds for nonathletic activities, promotional activities, and opportunities for co-branding.

Regent Hall voiced his concern about some parts of the procurement process to develop the contract and suggested that this process be addressed internally and also with members of the legislature. He was most concerned about the failure in the procurement process during the negotiation phase, which he believes precluded The University of Texas System as a whole from bringing the full purchasing power or name brand to the negotiation. While it is a tremendous deal for U. T. Austin, he expressed that it was unfortunate the other institutions within the U. T. System were not given the opportunity to participate.

Following discussion, Vice Chairman Hicks moved that the U. T. System Board of Regents authorize the President of U. T. Austin to conclude negotiations and to execute all documents necessary for U. T. Austin to enter into an athletics

sponsorship and licensing agreement with NIKE USA, Inc. on substantially the terms and conditions recommended to the Board, as follows and previously provided to the Board, following review and approval of all documents by the Executive Vice Chancellor for Academic Affairs, the U. T. System Vice Chancellor and General Counsel, and the Associate Vice Chancellor and Athletics Counsel.

The motion was seconded and carried. Although not required by law, Vice Chairman Hildebrand abstained from discussion and vote due to financial interest in NIKE, USA, Inc.

October 27, 2015

**Sponsorship and Licensing Agreement
between
The University of Texas at Austin and NIKE USA, Inc.**

SUMMARY OF TERMS

NIKE is considered the national and international leader in sports performance apparel, footwear, and select equipment (such as balls, bats, strength training equipment items and technology, golf clubs, etc.). Texas Athletics seeks a long-term and continued alignment with the best athletics performance product sponsor and licensee. This will allow Texas Athletics to continue to recruit the best coaches, staff members, and student-athletes, and to optimize athletics performance and results.

As a licensee, NIKE provides tremendous exposure for UT Austin, its athletics program, institutional programs, and brand in the area of retail marketing and sales of products bearing official university marks, logos, and colors.

The total compensation (monetary and non-monetary) from NIKE to UT Austin over the new proposed term is almost \$250,000,000. The primary terms are:

Sponsorship Elements:

- Term: **July 1, 2016 through June 30, 2031 (including a right of exclusive first negotiation and right of first refusal/match at the end of the term).**
- NIKE up-front payment to UT Austin/Intercollegiate Athletics upon execution of agreement. **Value: \$20 million.**
- Exclusive and complimentary supplied competition product allotment of NIKE performance apparel, footwear, and select equipment for UT Austin's nine men's and 11 women's intercollegiate athletics teams (approximately 500 student-athletes and attendant coaches and staff). UT Austin coaches, student-athletes, and staff required to utilize NIKE performance footwear, apparel, and select equipment in all practices, competition, and intercollegiate athletics activities. Protection is built in to review allotments every five years in the event of product price increases and a need to mutually agree to product allotment adjustments. **Total complimentary supplied product guarantee over term: \$67,950,000 retail value plus allotment of \$1,500,000 retail for use at the athletics directors' discretion.**
- Texas men's sports: baseball, cross country, indoor track & field, outdoor track & field, football, basketball, tennis, golf, and swimming & diving.
- Texas women's sports: softball, cross country, indoor track & field, outdoor track & field, volleyball, soccer, basketball, tennis, golf, swimming & diving, and rowing.

- NIKE annual base compensation payment to UT Austin/Intercollegiate Athletics for sponsorship of NIKE-logoed apparel and equipment use by UT Austin/Intercollegiate Athletics teams. **Total guaranteed compensation: \$6,500,000 per year or \$97,500,000 over the term.**
- Annual compensation from NIKE is subject to an offset of equal amounts contributed by NIKE client and former UT Austin men's basketball student-athlete Kevin Durant). **Value: \$1 million per year and maximum \$15 million over the term.**
- NIKE financial support of UT Austin university initiatives (outside Intercollegiate Athletics) subject to UT Austin President's approval. **Value: \$1.5 million per year average and minimum \$750,000 per year. Total: \$22.5 million over the term.**
- NIKE funding of annual paid internships at market rate for two student-athletes and two (non-student-athlete) undergraduate UT Austin students. **Value: Priceless professional career experience for four UT Austin students each year.**
- Creation of signature Kevin Durant-UT Austin line of performance products, apparel, and footwear for use by intercollegiate teams and for offering as NIKE and UT licensed retail product. **Value: Promotional connection with Durant, known as one of the world's three best men's professional basketball players.**
- NIKE-caused appearances by NIKE clients for UT Austin promotional/fund raising purposes (Durant) and competition purposes (athletes to compete in open events at UT Austin's annual Texas Relays track & field event). **Value: Fundraising/prospect enhancement and enhancement of competition field at four-day Texas Relays event (spectator and meet sponsorship positive impact).**
- Texas Athletics head coaches receive opportunity (with athletics director-approval) to make annual appearances at NIKE-sponsored coaching clinics and similar activities. **Value: Texas head coaches' profile enhancement at NIKE sponsored events.**
- Texas Athletics equipment staff and managers receive opportunity to provide feedback as interested and educated consumers on NIKE performance apparel, footwear, and equipment. This relates to best serving the needs of UT Austin student-athletes, coaches, and staff members. **Value: Texas Athletics stays on the cutting edge of development of high performance product, equipment, and technology.**

Licensing Elements:

- Exclusive licensing arrangement between licensee NIKE and UT Austin's licensing vendors for licensed product. This product includes but is not limited to jerseys, authentic competition apparel, and performance products. UT Austin vendors in licensing are Collegiate Licensing Company (through 6-30-2016) and Learfield Licensing Partners (through 6-30-2023). This licensing arrangement permits retail products bearing official UT Austin trademarks, colors, and logos to be licensed for retail.

- Annual minimum royalty guarantee to UT Austin trademark licensing program and an annual royalty rate that has a “most favored nation” status among NIKE clients. NIKE royalties paid to UT Austin have exceeded \$1 million in five of the last six years. **Value over the term in minimum royalty guarantees: \$25,050,000.**
- Royalty payments to UT Austin trademark licensing program for co-branded Kevin Durant-UT Austin licensed retail products. **Value: TBD, but it should be noted that Durant licensed product sold by NIKE has reached record levels in recent years compared to other pro athletes in NIKE’s portfolio.**

History with NIKE:

- The original UT Austin-NIKE USA, Inc. seven-year agreement commenced 8-15-2000 (NIKE and UT Austin exercised a two-year extension option within this term to take the agreement through 6-30-2009).
- A first amendment on 12-5-2007 extended the agreement through 6-30-15. This first amendment included increased allotments for footwear/apparel/select equipment supplied product.
- A second amendment on 6-1-2009 added allotment of baseball to the supplied product of select equipment area and an annual increase of \$75,000 in base compensation to UT Austin/Intercollegiate Athletics.
- A third amendment on 1-6-2010 increased the allotment of supplied product by an additional \$300,000 per year and extended the term to 6-30-2016.
- A fourth amendment was proposed in 2013 but not executed and UT Austin subsequently hired an external consultant to perform a market analysis, etc.
- A fifth amendment on 6-30-2015 eliminated NIKE provision of volleyballs for use in UT Austin training and competition.
- A “sixth amendment” was, out of an abundance of caution, processed by the Athletics business office and UT Austin central contracting office to extend the exclusive negotiating period for NIKE. Subsequent legal review and the receipt by UT Austin of the NIKE proposal on October 1, 2015 clarified that a “sixth amendment” was not needed and that NIKE and UT Austin had reached mutually acceptable terms and conditions for an extension beyond the Third Extension Term.
- Subject to approval by UT System and the Board of Regents of the terms summarized above for a continuation of the sponsorship and license arrangement between UT Austin and NIKE, UT Austin will work with UT System Academic Affairs and UT System Office of General Counsel to finalize – for the very short term – a 7th amendment to the current Nike agreement and over the course of the next several weeks an amended and restated agreement will be entered into that takes into account the previous amendments,

the new terms, and also retitles the agreement to represent appropriately the type arrangement it is.

2. U. T. Austin: Discussion and appropriate action related to a contract with Bevilacqua Helfant Ventures, LLC (BHV) for consulting services (Deferred)

The item related to a contract with Bevilacqua Helfant Ventures, LLC (BHV) for consulting services at The University of Texas at Austin was deferred.

3. U. T. System Board of Regents: Action related to expectations of the Board of Regents concerning members of the Board including, but not limited to, expectations outlined in Regents' *Rules and Regulations*, Rule 10901 (Statement of U. T. System Values and Expectations)

Chairman Foster made the following remarks related to expectations of the Board of Regents concerning members of the Board including, but not limited to, expectations outlined in Regents' *Rules and Regulations*, Rule 10901 (Statement of U. T. System Values and Expectations).

Remarks by Chairman Foster

During the November (2015) meeting of the Board, Chancellor McRaven will present remarks concerning his vision for the U. T. System. It seems appropriate that we take an opportunity today to discuss the vision and mission of the Board itself and our expectations of members of this Board.

We are clearly at an unprecedented time in the Board's history. While we remain focused on advancing the 14 U. T. System institutions, I fear the focus is at times overshadowed by the negativity of one Regent whose comments are demoralizing to the hard-working employees across the U. T. System and disrespectful of the Chancellor.

As I have stated many times, I have great respect for Regent Hall, and Regent Hall certainly has individual First Amendment rights, but one would hope, that in exercising those right, civility would always prevail. However, recent public speeches, presentations, and statements include inaccurate statements about the great university system that each of us was appointed to advance and support and negative statements about its employees.

Regents' Rule 10901 outlines a shared System value requiring that all officers and employees be treated with dignity and respect. Dignity and respect must start at the top, with each member of the Board. Accordingly, Regent Hall's recent comments are of great concern to me, and I do not think they reflect the views or beliefs of the Board.

So I cannot remain silent while Regent Hall engages in constant criticisms and accusations. We cannot mandate that he change his tone, though I wish he would. But it is important for the public and employees across the U. T.

System as well as alumni, civic and business leaders, and our state's elected officials to know that Regent Hall's statements do not represent the view of the Board, and it is important for this Board to show our support of Chancellor McRaven and his leadership. I'd like to invite any comments from any other Board members on this matter.

Vice Chairman Hildebrand also commented on the importance of establishing a new tone of civility at the Board level.

Regent Cranberg, who was absent, had asked Chairman Foster to read the following remarks.

Remarks by Regent Cranberg

I do not believe that any Regent should be accusing the Chancellor of "mendacity." While we have not always agreed on policy matters, I respect the Chancellor's integrity and word. The working relationship among the Board and top System management is based on trust. To the extent this is undermined by word or action, it is damaging to our effectiveness. If there are trust issues as opposed to policy issues, these are best worked out directly among the parties involved.

Chairman Foster then called on Regent Hall who made the following remarks.

Remarks by Regent Hall

I too would welcome more decorum to our process. I am somewhat familiar with the Regents' Rule as I was the one who asked that the Rule be drafted and asked that the Chancellor present the Rule to the Board. I was very intentional in the reasons for that and this is a Rule that goes both ways. So, I would ask that while you are considering your vote on this unusual motion, I would like to add some context for you.

First, I am very surprised by your motion today, Vice Chairman Hildebrand. When I learned a couple of weeks ago that the Chancellor was not only upset with my public statements but refused to speak to me except through counsel, I reached out to you, Chairman Foster, in an attempt to diffuse any misunderstandings that may exist. While you never bothered to respond to my outreach, it did not alter my desire to discuss it with you. My public comments were a direct response to false statements made in open court on the Chancellor's behalf by his lawyers. On two separate occasions, Chancellor McRaven's outside lawyers have, I believe, inappropriately and falsely accused me of leaking confidential student information to the press, which is conduct punishable under the Penal Code.

And then they predicted that if the court were to favor my motion for summary judgement, student information would be on the front page of the *Dallas Morning News* by the next morning. They knew this to be false, it was malicious and they speak for the Chancellor. This is unfortunately not the first

time Chancellor McRaven has chosen to publicly undermine my role as fiduciary. After one of our recent public Board meetings, I spoke directly and privately to the Chancellor about my concerns and asked that he refrain from making false insinuations as to my past or future conduct in this regard. I thought we were in complete agreement, and I considered the matter closed. Apparently it was not, so here we are. That's all.

Vice Chairman Hildebrand then moved that the U. T. System Board of Regents express its disagreement with and disapproval of certain public statements made by Regent Wallace Hall.

He further moved that the Board document and communicate, via this motion, that Regent Hall is not a spokesperson for the U. T. System or the Board and his statements are personal and do not reflect the views or opinions of the Board of Regents.

The motion was seconded by Vice Chairman Hicks.

Regent Pejovich commented that while she would vote against this motion, she is supportive of Chancellor McRaven. She said she agreed with the second paragraph of the motion but would vote against the motion because of the overriding principles of the First Amendment and because she does not want to police free speech.

The motion carried, with Regent Hall abstaining from vote, and Regent Pejovich voting nay.

ADJOURNMENT.--At 3:44 p.m., there being no further business, the meeting was adjourned.

/s/ Tina E. Montemayor
Assistant Secretary to the Board of Regents

December 21, 2015