

Meeting No. 1,137

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

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July 8, 2015

Austin, Texas

MEETING NO. 1,137

WEDNESDAY, JULY 8, 2015.--The members of the Board of Regents of The University of Texas System convened in a special called meeting at 11:10 a.m. on Wednesday, July 8, 2015, in the Board Room, Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin, Texas, with the following participation:

ATTENDANCE.--

Present

Chairman Foster
Vice Chairman Hicks
Vice Chairman Hildebrand
Regent Beck
Regent Cranberg
Regent Hall
Regent Pejovich
Regent Tucker
Regent Drake, Student Regent, nonvoting

Absent

Regent Aliseda

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.

WELCOME TO STUDENT REGENT DRAKE.--Chairman Foster welcomed Student Regent Drake to his first Board meeting. Regent Drake is a doctoral student at The University of Texas Medical Branch at Galveston and a graduate of The University of Texas at Austin.

[On July 2, 2015, Governor Greg Abbott appointed Mr. Justin A. Drake, Galveston, Texas, as Student Regent to the Board of Regents of The University of Texas System to serve for a term from July 2, 2015 to May 31, 2016.]

RECESS TO EXECUTIVE SESSION.--At 11:11 a.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 1:09 p.m., the Board reconvened in open session for action on matters discussed in Executive Session and to consider the following agenda item.

1a. U. T. System Board of Regents: Discussion with Counsel on pending legal issues

No action was taken on this item.

1b. U. T. System Board of Regents: Discussion and appropriate action concerning legal issues related to litigation styled *Hall vs. McRaven*

No action was taken on this item. (See Minutes below concerning action taken on Open Session agenda item.)

2. 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, and U. T. System and institutional employees

No action was taken on this item.

AGENDA ITEM

U. T. System Board of Regents: Action taken related to litigation styled *Hall vs. McRaven*

Chairman Foster noted that members of the Board had an opportunity in Executive Session to get legal advice from System attorneys and outside legal counsel hired by The University of Texas System concerning legal issues related to pending litigation styled *Hall vs. McRaven*. He asked if there was a desire to discuss matters associated with this litigation in Open Session, and Vice Chairman Hicks read the following motion, which Chairman Foster then requested be distributed to each member of the Board for review and comment.

Motion by Vice Chairman Hicks

In an effort to effect a clear and open statement of the position of the Board of Regents related to pending litigation concerning access to certain documents and records, I move that the U. T. System Board of Regents expressly endorse Chancellor McRaven's May 20, 2015, offer of access to Regent Hall, as attached, which would provide Regent Hall:

- access to review all confidential and nonpublic documents gathered by Kroll, with redactions only for those documents and information protected by the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), or other privacy laws, as

- determined applicable by the Vice Chancellor and General Counsel in consultation with the System Administration (*Administrative Policy*) Privacy Officer and Systemwide Privacy Coordinator, and
- the opportunity for Regent Hall to identify and to discuss further, with the Chairman and the Chancellor, specific (*specifically*), redacted private information in those documents which he believes are necessary to review in order to satisfy an articulated, specific need related to his official responsibilities and duties as a Regent.

I move that, in the context of this Motion, the Board delegate (*designate*) to the Chairman, in consultation with the Vice Chairmen and General Counsel to the Board, the authority to determine whether a specific need for information is related to the official responsibilities and duties of a Regent.

I also move that the Board, while affirming the right and duty of each Regent to ask hard questions, encourage Regent Hall to begin review of the identified documents and to ask further questions, but urge him to abandon litigation that carries the potential to be costly and an unnecessary distraction from ongoing strategic efforts of the U. T. System.

I further move that the Board direct the Chancellor, the Vice Chancellor and General Counsel, and outside counsel, in the event the pending litigation styled *Hall vs. McRaven* proceeds, to vigorously defend the position of the Board, as articulated in this Motion and reflected in the actions taken thereunder, on behalf of the U. T. System.

[Note: In reading the motion, Vice Chairman Hicks made nonsubstantive deviations from the written text as noted in italics above. The written text was presented to and considered by members of the Board.]

Attachment to July 8, 2015 motion

Email

From: McRaven, William
Sent: Wednesday, May 20, 2015 3:19 PM
To: Hall, Wallace - Regent
Cc: Foster, Paul; Sharphorn, Dan; Frederick, Francie; Leslie, Steven; Aliseda, Ernest
Subject: Review of Kroll Documents

Regent Hall,

I was hoping to hear back from you regarding my offer to share Kroll documents, but I know we have both been busy so I wanted to extend the offer again.

I know we do not agree on access to personally identifiable student information in this instance, but I believe we can find a way for you to review most, if not all, of the Kroll documents you requested.

Here is the process I suggest for review of the Kroll documents:

We will continue to provide you with electronic access to all documents that are not subject to any TPIA exceptions, as those documents are identified by OGC and in response to pending AG open records rulings. Following the current practice, we will also provide access to other members of the Board.

Except as noted below, we will arrange for you to review, without copying, all confidential and nonpublic documents that are subject to TPIA exceptions

The exception to Items 1 and 2 above will be documents and information protected by FERPA, HIPAA, or other privacy laws. These will be redacted to protect privacy. However, if you identify specific private information that you believe you must review in order to obtain an understanding that satisfies an articulated, specific need related to your official responsibilities and duties as a Regent, I will have OGC carefully review the request.

Consistent with Regents' Rule 10101, Sec. 3.3, I will ask that you not share or disclose any confidential or nonpublic information to anyone, including private counsel. If you uncover information that causes you concern and which you believe needs further attention, please bring that either to me, the Chairman, or the full Board for review and possible action in accordance with Regents' Rule 10101, Sec. 3.4.

Please let me know if this process meets your approval and I will work with the board to arrange for you to review the documents.

Respectfully, Bill

Noting that excessive redaction of documents can make it difficult to understand the content of documents, Regent Cranberg asked if Vice Chairman Hicks would accept a friendly amendment to the motion regarding the minimum redactions required by federal law. Chairman Foster cautioned against limiting the redaction to comply only with federal law since state and common privacy laws also cover protection of student identifiable information. He commented that there might also be common sense protections not covered by the letter of the law, such as for a student who is not yet enrolled at a U. T. System institution who might not be specifically protected by FERPA. Regent Cranberg said broadening restrictions and redactions beyond state and federal law might entail a different playing field both legally and ethically.

Regent Pejovich commented that suggested language in the second paragraph of the motion, regarding delegation of authority to determine whether a specific need for information is related to the official responsibilities and duties of a Regent, takes authority away from a Regent to determine what they feel is necessary to perform their duties. She requested Vice Chairman Hicks consider a separate vote on that particular paragraph.

Vice Chairman Hildebrand said he felt that language in the first bullet of the motion makes it clear what will be allowed or not allowed concerning redaction of documents to be disseminated. Regent Cranberg responded that the terms "other privacy laws" and "common law privacy laws" are vague and create opportunities for excessive redaction compared to the clear standards of FERPA and HIPAA. He noted the Chancellor's efforts to move forward with responses to requests for information and said he did not want to overly obstruct that effort.

Chairman Foster asked Vice Chairman Hicks if he agreed to the two proposed amendments to the motion, and Vice Chairman Hicks said he would agree to more clearly define "specific, redacted private information" in the second bullet by repeating language referring to FERPA, HIPAA and other privacy laws as set forth below in congressional style. He asked General Counsel Frederick for clarification of Regent Pejovich's recommendation and did not accept that proposed amendment.

Revised Motion by Vice Chairman Hicks

In an effort to effect a clear and open statement of the position of the Board of Regents related to pending litigation concerning access to certain documents and records, I move that the U. T. System Board of Regents expressly endorse Chancellor McRaven's May 20, 2015, offer of access to Regent Hall, as attached (see Page 4), which would provide Regent Hall:

- access to review all confidential and nonpublic documents gathered by Kroll, with redactions only for those documents and information protected by the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), or other privacy laws, as

- determined applicable by the Vice Chancellor and General Counsel in consultation with the System Administration Privacy Officer and Systemwide Privacy Coordinator, and
- the opportunity for Regent Hall to identify and to discuss further, with the Chairman and the Chancellor, specific, redacted private information protected by FERPA, HIPAA, or other privacy laws in those documents which he believes are necessary to review in order to satisfy an articulated, specific need related to his official responsibilities and duties as a Regent.

I move that, in the context of this Motion, the Board delegate to the Chairman, in consultation with the Vice Chairmen and General Counsel to the Board, the authority to determine whether a specific need for information is related to the official responsibilities and duties of a Regent.

I also move that the Board, while affirming the right and duty of each Regent to ask hard questions, encourage Regent Hall to begin review of the identified documents and to ask further questions, but urge him to abandon litigation that carries the potential to be costly and an unnecessary distraction from ongoing strategic efforts of the U. T. System.

I further move that the Board direct the Chancellor, the Vice Chancellor and General Counsel, and outside counsel, in the event the pending litigation styled *Hall vs. McRaven* proceeds, to vigorously defend the position of the Board, as articulated in this Motion and reflected in the actions taken thereunder, on behalf of the U. T. System.

Vice Chairman Hildebrand seconded the motion. Regent Hall said he abstained from vote because he was not permitted to participate in related Executive Session discussion and did not have informed knowledge for a vote. Regent Pejovich said she abstained as well, and Regent Cranberg opposed the motion. The motion passed, with five votes in favor.

ADJOURNMENT.--At 1:23 p.m., there being no further business, the meeting was adjourned.

/s/ Carol A. Felkel
Secretary to the Board of Regents

July 16, 2015