

ACADEMIC AFFAIRS COMMITTEE

SUPPLEMENTAL MATERIAL

AUGUST 9, 2001

2. U. T. Austin: Request for Approval of Action Related to Participation Among U. T. Austin, the Education Commission of the States, Denver, Colorado, and Just for the Kids, Inc., Austin, Texas, to Support Research, Educational, and Policy Development Activities in a New Joint Initiative, the National Center for Educational Accountability

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Academic Affairs and President Faulkner that the U. T. Board of Regents approve the participation by U. T. Austin, as outlined below, in activities of the National Center for Educational Accountability (NCEA), a Texas nonprofit corporation that is organized and operated for the benefit of The University of Texas at Austin, The Education Commission of the States (ECS), and Just for the Kids, Inc. (JFTK). The ECS and JFTK are nonprofit organizations that serve public purposes related to educational and research activities of U. T. Austin. The NCEA, U. T. Austin, ECS, and, JFTK are committed to the improvement of schools throughout the United States and will pursue an educational and research agenda to benefit our nation's educational systems. The NCEA will raise the funding needed, supplementary to some basic infrastructure and administrative support committed by U. T. Austin, for the identification and development of research with respect to educational practices in State and local educational accountability systems and the translation of such research into policy models and resources to improve schools and educational activities.

It is further recommended that President Faulkner or his delegate be authorized to negotiate, approve, and execute any contracts, as approved by the Office of General Counsel, and to take all such actions deemed necessary or desirable to carry out the purpose and intent of the foregoing recommendation consistent with the representations made below and to the U. T. Board of Regents.

BACKGROUND INFORMATION

U. T. Austin, JFTK, and ECS have a mutual interest in the creation of a centralized research and policy center focused on educational accountability and performance management. The parties set out their intent to establish this entity on March 14, 2001 by entering into the Memorandum of Understanding set out on Pages 94d - 94g. The parties will work jointly and with the NCEA to capture critical information on educational accountability and performance management in a systematic fashion that will influence State and federal policy, serve as a resource for policymakers and practitioners, and address unmet research needs.

It is anticipated that Articles of Incorporation will be filed in August 2001 to establish the National Center for Educational Accountability (NCEA) under the Texas Non-Profit Corporation Act. The initial Board of Directors consists of Thomas W. Luce, Chairman; Larry R. Faulkner, Vice Chairman; and Ted Sanders, Secretary. The NCEA shall function as a support foundation for U. T. Austin, JFTK, and ECS. The NCEA will work with U. T. Austin, JFTK, and ECS to focus work on identifying best practices in State and local educational accountability systems, developing research on best practices, and translating the research into cutting-edge policy models and resources available to leaders for implementation and to raise funds to support these efforts.

The full NCEA Board will consist of fifteen (15) members. The President of the Education Commission of the States, the President of The University of Texas at Austin, and the Chairman of the Board of Just for the Kids, Inc. will serve *ex officio* on the Center's board. In addition, each organization will name one designee to the board. The remaining nine members will be selected initially by the three organizations (three per organization) and will be self-perpetuating. Tom Luce, Chairman of the Board of JFTK, will serve as first chair of the NCEA board.

The NCEA, as a support foundation for the benefit of U. T. Austin and other related public purposes, will be housed at U. T. Austin under a lease arrangement. It will operate in space shared by the U. T. Austin Center for Educational Accountability, the U. T. Austin unit that will carry out efforts contemplated by the NCEA and the parties. These units will be located adjacent to the U. T. Austin J.J. Pickle Research Campus in north Austin. The initial year of operation will be the 2001 – 2002 fiscal year. The estimated operating budget for 2001 – 2002 is \$2,565,650. Of this budget, \$1,706,391 will be provided by JFTK and U. T. Austin will provide the remaining \$859,259. In future years, U. T. Austin intends to fund four (4) positions to support the effort with additional funding to be raised by the NCEA and the parties. The parties agree that first priority for future funding raised through the auspices of the NCEA will be to provide compensation for the core group of fourteen (14) positions that will transfer from JFTK to the U. T. Austin Center for Educational Accountability.

U. T. Austin will recruit and appoint the chief executive officer of the U. T. Austin Center for Educational Accountability. That appointment will be subject to review and acceptance by the NCEA Board since the appointee will be working in support of the efforts of the NCEA.

U. T. Austin will enter into a contract or contracts with the NCEA to provide space, utilities, custodial and waste services, and administrative support services. The NCEA will pay fair value. The NCEA also will reimburse U. T. Austin for the compensation of U. T. Austin employees who may provide direct services for the NCEA as a foundation in support of U. T. Austin and other related public purposes.

JFTK will enter into a contract or contracts with the NCEA to provide funding for the 2001 – 2002 annual operating budget as listed above and other assets that will be dedicated to the efforts of the NCEA and the parties, including computer equipment and software, all existing databases, the model for development of the databases, and related intellectual property and know-how.

The NCEA, U. T. Austin, JFTK, and ECS all shall have full access to and use of the databases and other information developed to date and those that will be developed during the course of the joint efforts of the NCEA and the parties. Should the NCEA dissolve in the future, U. T. Austin, JFTK, and ECS shall continue to have full rights of access to and use of the databases and other information.

U. T. Austin, JFTK, and ECS each may currently own rights to intellectual property that is needed for the work contemplated by the NCEA and the parties. Each will license on a nonexclusive basis the use of such intellectual property to the NCEA and to the other parties. Each also will license on a nonexclusive basis to the NCEA and the other parties the use of intellectual property developed either individually or jointly during work carried out as part of the efforts that the parties will pursue through their relationships with each other and the NCEA. Should the NCEA dissolve in the future, U. T. Austin, JFTK, and ECS shall continue to have full nonexclusive license rights to all such intellectual property.

MEMORANDUM OF UNDERSTANDING

Among
The Education Commission of the States,
Just for the Kids, Inc. and
The University of Texas at Austin

March 14, 2001

In December 2000, the chief executives of the Education Commission of the States (ECS), Just for the Kids, Inc. (JTFK), and The University of Texas at Austin (UT) met to discuss the need to systematically capture critical information on educational accountability and performance management that would influence state and federal policy, serve as a resource for policymakers and practitioners, and address unmet research needs. Building upon initial efforts by ECS to develop a policy center focused on accountability issues, the parties agreed to support a joint initiative to create the National Center on Educational Accountability (NCEA). This memorandum reflects their agreement, in principle, to create such a Center. The nature of the agreement is captured in the following points:

1. ECS, JTFK and UT have a mutual interest in establishing a centralized research and policy center focused on educational accountability and performance management.

ECS is a nonprofit organization created for the purpose of helping state leaders to develop and implement educational policies. ECS seeks to develop its capacity to provide state leaders with research-based information on successful accountability and performance management policies and practices. ECS would contribute the following general assets to the partnership: (a) its national reputation for balanced presentation of research results; (b) its distribution network for policy information to policymakers and practitioners; (c) its growing presence as an Internet portal for education policy; and (d) its capacity to engage policymakers in innovations in education policy and practice.

JTFK is a non-profit organization established for the purpose of advancing educational accountability and uncovering best educational practices at the school level in Texas and other states. JTFK would contribute the following general assets to the partnership: (a) its reputation for assembling comprehensive, comparative, privacy-protected data from assessment programs adopted by individual states; (b) its interest in institutionalizing such data for the benefit of policymakers, administrators, and researchers; (c) its approach to the identification and promotion of best practices in schools with demonstrably strong student achievement.

UT is a public institution of higher education serving the State of Texas. Given its leadership role in the higher education community, UT seeks to identify and support the implementation of high-leverage approaches to improved public education. UT would contribute these general assets to the partnership: (a) its reputation as one of the world's leading centers of education, research, and public service; (b) its ability to connect the partnership to its own large community of scholars working on educational policy and to the much larger national community beyond UT; (c) its physical campus, which can provide a prominent, accessible location for NCEA.

2. The National Center on Educational Accountability will focus its work on identifying best practices in state and local educational accountability systems, developing research on best practices, and translating the research into cutting-edge policy models and resources available to state leaders for implementation.

Building upon JFTK's ongoing efforts to develop reliable data on all aspects of school performance while maintaining privacy protection, the NCEA will create a research agenda focused on policies and practices that enhance student achievement. The research will focus on different strategies, taking into account the current best thinking on accountability, and will extend the current state-of-the-art into new, more coherent, and integrated models. The coherence will come from identifying the essential policy components, such as assessment design, approach to curriculum and instruction, the specificity and selection of content standards, needed staff training, use of technology, and how performance will be judged, reported and consequences applied.

3. ECS, JFTK and UT will collaborate to establish the NCEA as a separate legal entity affiliated with and benefiting from the support of each of the individual organizations.

The National Center will be incorporated as a non-profit organization for educational purposes and operate as a joint venture among the parties. The Center's governing board will consist of 15 members. The President of the Education Commission of the States, the President of The University of Texas at Austin, and the Chairman of the Board of Just for the Kids, Inc. will serve *ex officio* on the Center's board. In addition, each organization will name one designee to the board. The remaining nine members will be selected initially by the three organizations (three per organization) and will be self-perpetuating. Tom Luce, Chairman of the Board of Just for the Kids, will serve as first chair of the governing board.

4. The National Center will be housed at the University of Texas-Austin, but will host researchers interested in relevant topics from major institutions of higher education, educational agencies, foundations, and other organizations across the country.

The researchers participating in this consortium would develop the findings about “what works” to support effective instruction in the classroom and school improvement. Field research would focus on identifying best policies and practices at the school and district level and effective state policy by looking at schools, districts, and states with higher than predicted levels of student achievement. Over time, the center would identify steps in the implementation and change process.

5. ECS, JFTK and UT each will contribute resources, either directly or in-kind, to launch the National Center.

Based on preliminary discussions, the parties agree to the following:

- ECS will seek financial support from foundations and other parties to support the operation of the Center and will also support the Center’s efforts to inform and engage state policymakers.
- JFTK will provide the Center with all know-how, processes, software, data, models, methodologies, trademarks and other intellectual property related to its assessment tool and techniques. JFTK will also provide technical expertise in adapting and enhancing the tool and techniques for use by the Center and will support the Center in promoting the use and adaptation of the tool and techniques by others to the extent of its financial resources. In addition JFTK will transfer to the Center its current arrangements with the states of Minnesota, Arkansas, Tennessee, Georgia, Florida and Washington to design a JFTK assessment system for such states.
- UT will provide space for the core activities of the Center, including (a) office space for the executive director, an administrative aide, secretary, and network administrator; (b) meeting space needed for routine needs; and (c) additional space sufficient to host existing personnel and operations of JFTK. UT will also contribute financial resources, including salaries and benefits of an executive director, administrative aide, secretary, and a network administrator, plus an operational budget needed to sustain the activities of these four staff members and the space assigned to them. It is understood that UT would need to cast these commitments in a form compatible with its obligations under the laws of the State of Texas and the *Regents’ Rules* and in a form that is practical to administer from year to year. UT would assist NCEA in securing additional staff and space for expanded programs, but NCEA would generally be expected to cover the salaries and operating costs

from the funding that it raises to support those programs. To the extent feasible under the laws of the State of Texas, the *Regents' Rules*, and the legal agreements and governing principles defining the Center, UT also will offer (1) all employees of the Center the benefits, privileges, and employment provisions normally available to UT employees, (2) the right of the Center to operate essentially as an Organized Research Unit at UT Austin, having the ability to submit proposals through UT's supporting offices and the ability to recover indirect costs on grants using UT's negotiated basis. The Center and UT would need to negotiate principles for sharing indirect costs recovered by this mechanism. In addition, UT will explore the feasibility of receiving gifts and managing endowments on behalf of NCEA.

6. The intent of the ECS, JFTK and UT to jointly establish the National Center is conditioned upon express consent of each organization's respective governing bodies. The parties agree to present a proposal to their respective governing boards for approval no later than May 1, 2001.

Based upon the mutual understanding of the parties herein, ECS, JFTK and UT agree to designate representatives from each organization by March 20, 2001 to begin to negotiate the specific terms and conditions for the establishment of the National Center on Educational Accountability.

HEALTH AFFAIRS COMMITTEE

SUPPLEMENTAL MATERIAL

AUGUST 9, 2001

7. U. T. M. D. Anderson Cancer Center: Request for Approval of Authorization to Lease Approximately 3.6 Acres of Land on Old Spanish Trail, Houston, Harris County, Texas to Proton Therapy Center - Houston, Ltd., L.L.L.P.; Authorization to Execute a Limited Partnership Agreement with PTC Houston Management, L.P., and PTC - Houston Investors, L.L.C.; Authorization to Execute a Medical Direction Agreement, Professional Services Agreement, a Staffing and Operations Agreement, a Utilization Agreement, and a Sublicense Agreement, all with Proton Therapy Center - Houston, Ltd., L.L.L.P.; and Authorization to Take All Actions Necessary to Carry Out the Intent of the Foregoing Agreements

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Business Affairs, the Executive Vice Chancellor for Health Affairs, the Vice Chancellor and General Counsel, and President Mendelsohn that the Board authorize U. T. M. D. Anderson Cancer Center to execute the following agreements, conditioned upon approval of the Office of General Counsel and the Office of Business Affairs:

- a. A Ground Lease of approximately 3.6 acres of land on Old Spanish Trail in Houston, Harris County, Texas, between the U. T. Board of Regents, on behalf of U. T. M. D. Anderson Cancer Center, and the Proton Therapy Center - Houston, Ltd., L.L.L.P.
- b. A Limited Partnership Agreement between PTC Houston Management, L.P., PTC - Houston Investors, L.L.C., and U. T. M. D. Anderson Cancer Center

- c. A Medical Direction Agreement, a Professional Services Agreement, a Staffing and Operations Agreement, a Utilization Agreement, and a Sublicense Agreement between U. T. M. D. Anderson Cancer Center and Proton Therapy Center - Houston, Ltd., L.L.L.P.

It is further recommended that the institutional President be authorized to take any and all actions necessary or desirable to carry out the purpose and intent of the foregoing agreements including, without limitation, the authority to sublicense trademarks owned by the U. T. Board of Regents for the specific purposes set forth in the Sublicense Agreement and the authority to take any and all such actions necessary to fulfill the rights and obligations and receive the benefits provided in each of the above listed agreements.

BACKGROUND INFORMATION

Investment bankers Sanders Morris Harris, Houston, Texas, acting on behalf of PTC Houston Management, L.P. and PTC - Houston Investors, L.L.C., and U. T. M. D. Anderson Cancer Center negotiated to create a series of documents that authorize investment in a Texas registered limited liability limited partnership (LLLP) consisting of the same parties. As envisioned, the three parties will invest in a business entity in which PTC Houston Management, L.P. would serve as the general partner with a 1% interest in the LLLP. U. T. M. D. Anderson Cancer Center will hold an ownership interest in the LLLP, and PTC - Houston Investors, L.L.C. will hold the balance of the 74% interest in the LLLP. PTC Houston Management, L.P. will receive a management fee equal to 4% of all operating revenue from the LLLP. The agreement does not provide for a development fee to be paid to PTC Houston Management, L.P. and its affiliates. The interest of U. T. M. D. Anderson Cancer Center in distributions from the Partnership would be partially subordinated to distributions of a return on the contributions of the other Partners until such time as those Partners have received a 58% return on their capital.

The limited liability limited partnership would develop and operate a proton therapy center to provide the latest technology to administer radiation therapy to cancer patients at U. T. M. D. Anderson. As structured, the LLLP will secure equity and debt sufficient to construct and commence operations of a Proton Therapy Center costing approximately \$95 million dollars. The U. T. Board of Regents, on behalf of U. T. M. D. Anderson Cancer Center, will lease to the LLLP a parcel of approximately 3.6 acres of land in the south campus research area on Old Spanish Trail. The lease is for a maximum term of 60 years and provides for prepaid rental of \$2.5 million, which U. T. M. D. Anderson Cancer Center will invest in the LLLP as

part of its capital contribution. The lease further provides that, in the event that U. T. M. D. Anderson Cancer Center no longer participates in the LLLP, the U. T. Board of Regents will be entitled to receive fair market value rental or a discounted fair market value rental, depending upon the circumstances of the withdrawal of the Cancer Center from the LLLP. If the LLLP expires at the end of its primary term of 40 years or after a renewal period, the lease will terminate. Finally, at the time of termination of the Lease whether upon early termination due to default by the Lessee or upon expiration of the lease term, U. T. M. D. Anderson is, under many circumstances, required to purchase the building from the LLLP at fair market value as defined in the lease, not to exceed an amount equal to twice the amount budgeted for the cost of completion of the building (under the construction budget approved by U. T. M. D. Anderson, as modified from time to time) increased by increases in the Consumer Price Index from completion to the date of purchase, and decreased by "depreciation" as defined in the lease.

In addition to the Limited Partnership Agreement and the lease, there are five additional related agreements: (1) a Medical Direction Agreement which, for a fee equal to the cost of employing the Medical Director for the Proton Therapy Center to be received by the Cancer Center, provides that the Division Head for Radiation Oncology be appointed as the Medical Director of the facility; (2) a Professional Services Agreement under which the Cancer Center provides the doctors, dosimetrists, and physicists for the delivery of proton therapy and bills and collects for the professional fees so generated; (3) a Staffing and Operations Agreement which provides for other services that will be purchased by the LLLP from the Cancer Center for support services (such as triage nurses and other support personnel); (4) a Utilization Agreement which provides certain obligations of the LLLP to provide facilities and resources to Cancer Center researchers for research; and (5) a Sublicense Agreement for the use of the Cancer Center name for the promotion of proton therapy services.

Establishment of a Proton Therapy Center in partnership with Tenet Healthcare, Inc. as the original investor and majority partner was originally approved by the U. T. Board of Regents in August of 1999. Because of decisions unrelated to the therapeutic technology involved, Tenet Healthcare, Inc. determined it would not enter into the transaction. The Cancer Center sought another majority investor to participate on terms more beneficial to the institution and the U. T. System. The Cancer Center provided information and requested deal points to four different entities to allow each entity to make proposals on financing and development of a proton therapy center in conjunction with the Cancer Center. The four entities are: Sanders Morris Harris through its development partner the Styles Group; DevelopTech Resources through its principal David Nance; Proton Therapy Venture Group, Inc.; and CIBS Oppenheimer. Proposals were received from Sanders Morris Harris, DevelopTech Resources and Proton Therapy Venture Group, Inc. in March 2001.

Following an evaluation of the proposals, the Cancer Center chose PTC - Houston Investors, L.L.C. and PTC Houston Management, L.P., acting through the investment banking firm of Sanders Morris Harris as the majority investors. Sanders Morris Harris was determined to be the best partner based upon most experience in raising capital for similar projects; most experience in developing health-care projects; most realistic business plan for the Center; more potential financial return for U. T. M. D. Anderson Cancer Center within realistic operating parameters; and better managerial compatibility with investment partners. The arrangement proposed is more beneficial than the Tenet proposal approved in 1999 in the following significant aspects:

- Cancer Center participation in initial partnership profits guaranteed at 15% (to a maximum of 25%) rather than 5% as under the Tenet partnership proposal
- Services provided exclusively by Cancer Center physicians and physicians "invited" by Cancer Center
- All technical and staffing support provided by Cancer Center.

The decision process was reviewed and the result concurred with by outside consultants Deloitte & Touche. The proposed agreements have been reviewed and approved by the Office of General Counsel.