

# Utah Tech University Policy

## 251: Competition with Private Enterprise and Unfair Competition Grievance



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### I. Purpose

- 1.1 To conform Utah Tech University (“the University”) policy to the Utah Board of Higher Education Policy R555 regarding competition with private enterprise.
- 1.2 To set forth the procedures for adjudicating complaints by private businesses relating to claims of unfair competition under Utah Board of Higher Education R555.

### II. Scope

- 2.1 This policy applies to all University business enterprises or other support activities that provide specific services to the university community.
- 2.2 Private enterprise entities that operate service or auxiliary units on university premises under contract are subject to this policy.

### III. Definitions

- 3.1 **University Community:** as used in this policy, refers to prospective students, students, faculty, staff, alumni, and guests of the University.
- 3.2 **Educationally-related Services:** those non-academic auxiliary services that are reasonably related to the educational needs of the University community, e.g., Campus Store(s), dining facilities, student-housing, etc.
- 3.3 **Hearing Committee:** an ad hoc, three-person committee appointed by the Vice President of Administrative Affairs and comprised of two university

officers and a representative from the private sector.

- 3.4 ***Institutional Services***: University facilities, goods, and services.
- 3.5 ***Non-academic Self-support Services***: services and/or programs that are complementary to an institution's teaching, research, and public service functions and are funded through the program's own activities or by charging a fee directly related to the costs of providing the goods or services.

#### IV. Policy

- 4.1 The University shall provide educationally related services to the university community so long as such services are provided in accordance with the requirements of Utah Board of Higher Education Policy R555.
- 4.2 The university will advertise institutional services to the university community or share information with the general public via webpage, the internet, social media, and email.
- 4.3 Services to persons other than members of the university community shall not be provided unless:
  - 4.3.1 The service offers a substantial educational or research experience for registered students and faculty;
  - 4.3.2 The service fulfills the institution's public service mission;
  - 4.3.3 The service is incidental to the ordinary and authorized function of a university community, i.e., occasional sales by bookstore, food service, etc., to University visitors;
  - 4.3.4 The service consists of recreational, cultural, and athletic events; health services and medical treatment; public service radio and TV broadcasting; events of functions which have as their principal purposes the improvement of relations between the institutions and the general public; and sales of contributed services, if related to fund raising activities;
  - 4.3.5 The equivalent service is not available in the local area; or
  - 4.3.6 The service has been specifically authorized by the Utah Board of Higher Education.
- 4.4 **Grievance Review Procedures**: In the event that the provision of a good or

service by the University is perceived to be in competition with a privately-owned business, that business shall be provided the opportunity for a hearing of such a complaint (See Section IV Procedures).

## **V. References**

- 5.1 University Policy 250: Auxiliary Services Operation
- 5.2 Utah Board of Higher Education Policy R550: Auxiliary Enterprises Operation and Accountability
- 5.3 Utah Board of Higher Education Policy R555: Providing Facilities, Goods, and Services in Competition with Private Enterprise

## **VI. Procedures**

- 6.1 Complaints of unfair competition should be submitted in writing to the University's Vice President of Administrative Affairs (VP) who is the first point of contact when requesting a hearing. The complaint should identify the Institutional Service in question and provide the basis for believing that the service has unfairly competed with private businesses.
- 6.2 Within twenty (20) business days of receiving the complaint, the VP shall determine if the complaint articulates a violation that is covered by Utah Board of Higher Education Policy R555. If so, the VP shall refer the complaint to the Hearing Committee and notify the Department Director in charge of the Institutional Service in question. If not, the complaint will be dismissed and the complainant will be informed in writing that the complaint fails to articulate a violation of Policy R555.
- 6.3 Within five (5) business days of receipt of notice of the complaint, the Department Director in charge of the Institutional Service in question will submit to the Hearing Committee a response to the complaint.
- 6.4 Hearings shall occur within a reasonable time after referral of the complaint to the Hearing Committee. Written notice of the date and time of the Hearing will be provided to the parties at least seven (7) business days before the hearing.
- 6.5 The Complainant and the Respondent (or designee) may attend the hearing and present their positions to the Hearing Committee. Each party may be accompanied by an advisor (including legal counsel) who will be permitted to attend, but not directly participate, in the proceedings. Any party intending to bring legal counsel as their advisor shall notify the Hearing Committee and the opposing party of this decision at least three

(3) business days before the hearing.

- 6.6 The Hearing Committee shall determine the length of the hearing and the procedures to be followed in the hearing.
- 6.7 Any documentation that the parties would like the Hearing Committee to consider should be presented to the Committee and to the opposing party at least three (3) business days before the hearing.
- 6.8 As a general rule, the Hearing Committee will not hear evidence from party witnesses. If parties wish the Committee to consider witness testimony, the names of the proposed witnesses and a brief description of their testimony will be submitted to the Committee and to the opposing party at least three (3) business days before the hearing. The Committee shall have the discretion to grant or deny the request to submit witness testimony.
- 6.9 The Hearing Committee is not bound by strict rules of legal evidence or procedure and may consider any evidence it deems relevant.
- 6.10 University legal counsel may serve as a resource to the Hearing Committee deliberations and voting shall occur in closed session after the presentations of the parties.
- 6.11 Hearings shall be closed to the public. Hearing Committee deliberations and voting shall occur in closed session after the presentation of the parties.
- 6.12 The Hearing Committee shall determine by majority vote, and by a preponderance of evidence, whether the Institutional Service offered by the University violates Policy R555.
- 6.13 Within five (5) business days of the hearing, the Committee shall provide a written report of its decision to the VP and the parties.
- 6.14 Either party may submit a written appeal of the Committee decision (and/or the VP's decision to not refer a matter to a Hearing Committee) to the University's Board of Trustees. The appeal shall be submitted to the Board and to the opposing party within five (5) business days of receipt of the Committee (or VP) decision.
- 6.15 The other party to the appeal may submit a response to the Board within three (3) business days of receipt of the appeal.
- 6.16 The appeal will be considered by the Board in its next regular meeting, so long as the time for adding new matters to the Board agenda has not

passed. Otherwise, the appeal will be added to the next regularly scheduled Board meeting.

6.17 As a general rule, the Board will not hear oral argument on the appeal but will consider the written decision of the Hearing Committee, the written appeal and the written response to the appeal in making its decision. The Board may, in its discretion, determine to hear oral argument on the appeal.

6.18 Board deliberations and voting shall occur in the open meeting of the Board. The majority vote of the Board members shall determine the matter on appeal. The decision of the Board shall be the final decision on the matter.

## VII. Addenda

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Policy Owner: Vice President of Administrative Affairs  
Policy Steward: Executive Director of Auxiliary Services

History:

Approved 09/27/2019

Revised 0/0/00

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