

Procedure P3-160: Unfair Competition Grievance Procedure

Revision 0. Effective date: May 12, 2015.

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I. **Purpose and Scope**

A. Purpose.

To set forth the procedures for adjudicating complaints by private businesses relating to claims of unfair competition under Utah Board of Higher Education Policy R555.

B. Scope.

II. **Definitions**

The definitions provided in 3-160 apply for this procedure. In addition, the terms below apply for the limited purpose of this procedure.

A. “Institutional Services” means the University's facilities, goods and services.

III. **Procedure**

- A. In the event that a private business perceives the University to be providing Institutional Services in violation of Utah Board of Higher Education Policy R555, the business may file a complaint and request a hearing.
- B. Complaint. Complaints of unfair competition should be submitted in writing to the University's Chief Administrative Officer (CAO) 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.
- C. Referral or Dismissal. Within twenty (20) business days of receiving the Complaint, the CBO shall determine if the Complaint articulates a violation that is covered by Utah Board of Higher Education Policy R555. If so, the CBO shall refer the Complaint to a Hearing Committee and notify the University administrator 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.
- D. Response. Within five (5) business days of receipt of notice of the Complaint, the University administrator in charge of the Institutional Service in question (the "Respondent") may submit to the Hearing Committee a response to the Complaint.
- E. Hearing Committee. The Hearing Committee shall be an ad hoc, three person committee appointed by the CAFO and comprised of two university officers and a representative from the private sector.
- F. Hearing Procedures.
 - 1. 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.

2. The Complainant and the Respondent (or designee) may attend the hearing and present their positions to the 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 Committee and the opposing party of this decision at least three (3) business days before the hearing.
3. The Hearing Committee shall determine the length of the hearing and the procedures to be followed in the hearing.
4. Any documentation that the parties would like the Committee to consider should be presented to the Committee and to the opposing party at least three (3) business days before the hearing.
5. As a general rule, the 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. The Hearing Committee is not bound by strict rules of legal evidence or procedure and may consider any evidence it deems relevant.
7. 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.
8. Hearings shall be closed to the public. Hearing Committee deliberations and voting shall occur in closed session after the presentation of the parties.
9. 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.

10. Within five (5) business days of the hearing, the Committee shall provide a written report of its decision to the CAFO and the parties.

G. Appeal to the Board of Trustees

1. Either party may submit a written appeal of the Committee decision (and/or the CAFO'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 CAFO) decision.
2. The other party to the appeal may submit a response to the Board within three (3) business days of receipt of the appeal.
3. 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.
4. 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.
5. 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.

Sections IV- VII are for user information and are not subject to the approval of the Academic Senate or the Board of Trustees. The Institutional Policy Committee, the Policy Owner, or the Policy Officer may update these sections at any time.

IV. Policies/ Rules, Procedures, Guidelines, Forms and other Related Resources

- A. Policies/ Rules. [*reserved*]

B. Procedures, Guidelines, and Forms. [*reserved*]

C. Other Related Resources. [*reserved*]

V. References

A. [*reserved*]

VI. Contacts

[*reserved*]

VII. History

Revision History.

A. Current version. Revision 0.

1. Effective Date. May 12, 2015.

2. Editorial Revisions

a. Editorially revised [date] to replace references to the Board of Regents with the Utah Board of Higher Education

B. Previous versions.

C. Renumbering

1. Not applicable.