



Policy Name:	Policy and Procedures Relating to Handling Student Bankruptcy		
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Reviewed:	1) Non-Academic Policy Review Committee	Approved:	February 9, 2021
Approval Authority:	President <i>Timothy L. Hall</i>	Adopted:	February 17, 2021
Responsible Executive(s):	1) Vice President for Admissions and Enrollment Services 2) General Counsel	Revised:	N/A
Responsible Office(s):	1) Office of Enrollment Services 2) General Counsel	Contact(s):	1) Executive Director of Student Accounts 2) General or Assistant General Counsel

I. Policy Statement

Mercy College provides a competitive education to students and understands student bankruptcy may incur. Students under automatic stay protection may obtain their transcripts and are permitted to register for classes but prohibited to incur any additional debt. Post-petition registration payment terms are due upon registration of classes. Failure to establish a method of payment for post-petition registration is subject to Mercy College administratively withdrawing the student. Students who are not in default on federal and/or state student loans may use Federal, State and College financial aid awards to pay the post-petition.

II. Bankruptcy in General

The two-fold objective of the Bankruptcy Code is to (1) relieve the honest debtor from the burden of oppressive debt, thereby granting a “fresh start” and (2) provide for equitable treatment of creditors through a systematic distribution of the debtor’s nonexempt property.

College and universities have an equally important objective to collect amounts owed for educational and other service rendered to students. To achieve this, many campuses institute and enforce policies of withholding official transcripts and barring registration for students who fail to fulfill their financial obligations to the institution. Outside of bankruptcy, such actions are considered reasonable and are not unfair collection practices.

The extent to which the College may enforce these policies against a student who is, or has been, a debtor under the Bankruptcy Code is determined by a number of factors, including the operation of the automatic stay provisions and the discharge injunction. Understanding these concepts is essential to ensuring that Mercy College does not violate the Bankruptcy Code when enforcing its collection policies and procedures.

A. Restrictions on Collection Procedures During the Pendency of a Bankruptcy Case

1. Automatic Stay

The automatic stay is one of the fundamental debtor protections provided by the Bankruptcy code. It is designed to (a) protect the debtor by giving them a “breathing spell” from the collection efforts of creditors; and (b) maintain the status quo between the debtor and his creditors. The automatic stay temporarily prohibits a broad range of creditor conduct, including “any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case.” The stay arises the moment a debtor files a petition for relief in the bankruptcy court, and remains in effect until the case is closed or dismissed, or a discharge is granted or denied.

Although an institution will typically receive formal notice of a student’s bankruptcy petition by mail, creditors are subject to both actual and inquiry notice for purposes of the automatic stay. Consequently, the College has a duty to investigate any notice of bankruptcy filing by one of its student debtors, regardless of how the institution learns of it. Once on notice, the College and its agents must immediately suspend any collection efforts outside the bankruptcy process. If an

institution willfully violates the automatic stay, the student debtor may be entitled to monetary damages, including costs, attorney's fees and—in appropriate circumstances—punitive damages.

2. Withholding Official Transcripts:

The majority of courts that have addressed withholding a debtor's transcript have concluded that withholding a student's transcript due to an outstanding debt on their student account violates the automatic stay, as it is deemed "act to collect". As such, Mercy shall provide students who have a pending bankruptcy with one copy of an unofficial transcript upon request.

Note that the automatic stay and this transcript policy applies to the debt that is relating to the particular degree in question. So a student might be in default on their graduate degree, but have already paid their undergraduate degree with Mercy. In that case, the student could receive an official undergraduate transcript.

3. Class Registration and Advance Payments:

Just as the College cannot legally withhold transcripts, we cannot deny class registration to enrolled students who have a pending bankruptcy case, as that too could be considered an act to collect prohibited by the automatic stay. With that said, while the College cannot deny registration to a student with a pending bankruptcy, it need not permit a student to accrue *new* education debt going forward. As such, Mercy College requires advance payment of tuition or will administratively withdraw a student who incurs a tuition charge but fails to pay in accordance with this Policy.

B. Discharged Student Debt

Tuition and fee charges by a College are generally dischargeable debt in bankruptcy. Certain debts are non-dischargeable by statute, and thus can be collected after bankruptcy. These include certain educational loans. Most education loans can, however, be discharged through a special process within the bankruptcy called an "adversary proceeding" after a finding of undue hardship. The exception to discharge for education debt is self – executing, meaning the bankruptcy courts must make an undue hardship finding before discharging that debt, even if the creditor does not request one.

If a student's loans and tuition and fees are discharged in bankruptcy, then the College must provide them access to their official transcript. If the student debtor emerges from bankruptcy with non-discharged educational debt, the College is free to pursue traditional collection methods--including transcript withholding—with respect to that debt.