




<b>Policy Name:</b>	Policy Prohibiting the Withholding of Student Transcripts and Collecting Student Debt While in Bankruptcy		
<b>Associated Form(s):</b>	N/A	<b>Policy Number:</b>	2022-15
<b>Reviewed:</b>	Non-Academic Policy Review Committee	<b>Approved:</b>	September 28, 2022
<b>Approval Authority:</b>	President 	<b>Adopted:</b>	October 5, 2022
<b>Responsible Executive(s):</b>	<ol style="list-style-type: none"> <li>1. Provost</li> <li>2. Vice President for Enrollment Management</li> </ol>	<b>Revised:</b>	Policy Relating to Handling Student Bankruptcy, February 17, 2021
<b>Responsible Office(s):</b>	<ol style="list-style-type: none"> <li>1. Registrar</li> <li>2. Office of Student Accounts</li> </ol>	<b>Contact(s):</b>	<ol style="list-style-type: none"> <li>1. Registrar</li> <li>2. Executive Director of Student Accounts</li> </ol>

## **I. Policy Statement**

Mercy University provides a competitive education to students. The University recognizes, in accordance with New York State law, that students should not be penalized based on their debt owed to the University by having their transcript or diploma withheld from them by the University. This includes any currently enrolled students as well as past students. As such, this Policy prohibits the University from withholding student transcripts or diplomas because of any outstanding debt owed to the University. The University may, however, prevent an enrolled student (except in bankruptcy matters) from registering for new classes, or former students from re-enrolling until the debt has been paid in full.

In addition, the University understands student bankruptcy may incur. Students under automatic stay protection may obtain their transcripts and are permitted to register for classes but are prohibited from incurring 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 University administratively withdrawing the student. Students who are not in default on federal and/or state student loans may use federal, state and University financial aid awards to pay post-petition. In no circumstance, however, shall the University attempt to collect outstanding payments during the pendency of a bankruptcy or after the debt to the University is relieved.

## **II. Policy on Withholding Transcripts**

Regardless of any outstanding debt owed by a Mercy University currently enrolled or former student, the University shall not withhold providing a student their transcript or diploma if they have met all academic requirements to earn a degree, upon request. For student matters that relate to bankruptcy proceedings, refer to Section III below. For all non-bankruptcy matters, the University may prevent a currently enrolled student from registering for additional classes, or former students from re-enrolling, until the debt has been paid in full.

## **III. Handling Student Bankruptcy Matters**

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.

The extent to which the University 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 University 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 (1) protect the debtor by giving them a “breathing spell” from the collection efforts of creditors; and (2) 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 University 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 University 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

Pursuant to New York State Law, the University shall not withhold a student transcript to a current or former student who owes debt to the University, whether they are in bankruptcy proceedings or otherwise owe debt to the University.

##### 3. Class Registration and Advance Payments

Just as the University cannot legally withhold transcripts, it 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 University 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 University 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 University 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 University can no longer collect the debt. If the student debtor emerges from bankruptcy with non-discharged educational debt, the University is free to pursue traditional collection methods with respect to that debt.