

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JOSHUA R. CARTER,
individually and on behalf of others similarly situated,
Plaintiff - Appellant,

vs.

CURATORS OF THE UNIVERSITY OF MISSOURI, GEORGE
HARRIS, M.D., CARY CHELLADURAI, and KRISTEN KLEFFNER,
Defendants - Respondents.

On Appeal from the Circuit Court of Jackson County
Honorable Adam Caine, Circuit Judge
Case No. 2316-CV15651

REPLY BRIEF OF THE APPELLANT

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Table of Contents

Table of Authorities	4
Reply Argument	6
I. Point I: Mr. Carter’s breach of contract claim was not ascertainable until March 2013, satisfying the statute of limitations.	6
A. Taking Mr. Carter’s allegations as true, his injuries were not capable of ascertainment in August 2012.	7
B. The amended petition supports accrual no earlier than March 2013, making Mr. Carter’s action timely.....	9
C. Accrual is a question of fact precluding dismissal.	10
II. Point II: Mr. Carter’s breach of contract claim was within the statute of limitations because the University’s actions created a continuing injury.	11
A. Misrepresentations regarding accreditation constitute a continuing wrong.	11
B. The refusal to issue a compliant transcript also created a continuing injury.	12
III. Point III: Mr. Carter stated a claim for breach of contract, as the University made false representations about the Program’s accreditation.....	14
A. Mr. Carter pleaded the essential elements of a breach of contract.....	15
B. The University made an identifiable promise that the Program was fully accredited.	16
IV. Point IV: Mr. Carter stated a claim for breach of contract, as the University had an obligation to provide him with a transcript containing separate grade point averages for his undergraduate and graduate coursework.	18
A. The Program falls within the University’s transcript policy.....	18
B. Mr. Carter adequately alleged consideration.	18

C. The transcript policy imposed a mandatory contractual obligation.	19
V. Point V: Mr. Carter stated a claim for breach of contract, as the University refused to place him on academic probation in violation of its policy manual.	21
A. Mr. Carter pleaded the essential elements of a breach of contract.	21
B. The COE Manual is not a general policy.	22
VI. Point VI: Mr. Carter stated a claim for breach of contract, as the University refused to adjust his GPA according to his performance in the alternative curriculum.	23
Conclusion	26
Certificate of Compliance	26
Certificate of Service.....	27

Table of Authorities

Cases

<i>Bell v. Shelter Gen. Ins. Co.</i> , 701 S.W.3d 614 (Mo. App. 2024)	15-16
<i>Brantl v. Curators of Univ. of Mo.</i> , 616 S.W.3d 494 (Mo. App. 2020)	12
<i>D’Arcy & Assocs., Inc. v. K.P.M.G. Peat Marwick, L.L.P.</i> , 129 S.W.3d 25 (Mo. App. 2004)	13
<i>Davis v. Laclede Gas Co.</i> , 603 S.W.2d 554 (Mo. banc 1980)	11-13
<i>Doe v. Univ. of Mo.</i> , No. 19-CV-04229-NKL, 2022 WL 4043458 (W.D. Mo. Aug. 30, 2022)	19-20, 24
<i>In re McGlaughlin</i> , 885 S.W.2d 33 (Mo. App. 1994)	6
<i>Lucero v. Curators of Univ. of Mo.</i> , 400 S.W.3d 1 (Mo. App. 2013)	14-17, 22
<i>Martin v. Crowley, Wade & Milstead, Inc.</i> , 702 S.W.2d 57 (Mo. banc 1985)	7-9
<i>Martin v. Lindenwood Univ.</i> , No. 4:20-CV-1128 RLW, 2021 WL 3077665 (E.D. Mo. July 21, 2021)	16-17
<i>Matthews v. Harley-Davidson</i> , 685 S.W.3d 360 (Mo. banc 2024)	15
<i>Moynihan v. Gunn</i> , 204 S.W.3d 230 (Mo. App. 2006)	6
<i>Niedermeyer v. Curators of Univ. of Mo.</i> , 61 Mo. App. 654 (1895)	16-17, 19
<i>Powell v. Chaminade Coll. Preparatory, Inc.</i> , 197 S.W.3d 576 (Mo. banc 2006)	10
<i>Rogers v. Hester ex rel. Mills</i> , 334 S.W.3d 528 (Mo. App. 2010)	6
<i>Soueidan v. St. Louis Univ.</i> , 926 F.3d 1029 (8th Cir. 2019)	19
<i>Thorne v. Johnson</i> , 483 S.W.2d 658 (Mo. App. 1972)	7-9
<i>Walton v. Cty. of Seneca</i> , 420 S.W.3d 640 (Mo. App. 2013)	6

Revised Statutes of Missouri

§ 516.120.....	6
----------------	---

Missouri Supreme Court Rules

Rule 55.03.....	27
-----------------	----

Rule 84.04.....	6
-----------------	---

Rule 84.06.....	26
-----------------	----

Rules of the Missouri Court of Appeals, Western District

Rule 41	26
---------------	----

Other authorities

BLACK’S LAW DICT. (6th ed. 1990)	20
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Reply Argument^{1, 2}

I. Point I: Mr. Carter's breach of contract claim was not ascertainable until March 2013, satisfying the statute of limitations.

Joshua Carter appeals from a judgment dismissing his breach of contract action against the University and its administrators (D63; D64). As the judgment did not specify the grounds for dismissal (D63), this Court may “presume the dismissal was based on at least one of the grounds stated in the motion to dismiss.” *Moynihan v. Gunn*, 204 S.W.3d 230, 233 (Mo. App. 2006) (citation omitted). Below, one of the respondents’ arguments for dismissal was that the five-year limitation period in § 516.120, R.S.Mo., barred Mr. Carter’s amended petition (Tr. 1 at 7-9; D34 pp. 12-17; D50 pp. 3-10).

¹ Per Rule 84.04(c) a statement of facts must be “a fair and concise statement of the facts relevant to the questions presented for determination without argument,” and include “specific page references to the relevant portion of the record on appeal.” These requirements apply equally to a respondent’s statement of facts as they do an appellant’s. *Walton v. Cty. of Seneca*, 420 S.W.3d 640, 644 n. 3 (Mo. App. 2013). Interspersing argument or advancing a legal conclusion in the statement of facts violates Rule 84.04, *Rogers v. Hester ex rel. Mills*, 334 S.W.3d 528, 534 (Mo. App. 2010). The respondents’ statement of facts is replete with argument and legal conclusions about when they believe the statute of limitations began to run (Brief of the Respondents [“Resp.Br.”] 8) and their characterization of Mr. Carter’s claims and actions (Resp.Br. 9, 15-16), and it repeatedly omits record citations (Resp.Br. 8-9, 12, 16, 18). The Court should disregard it. See *In re McGlaughlin*, 885 S.W.2d 33, 34 n.1 (Mo. App. 1994).

² At the end of their brief (Resp.Br. 48-55), the respondents argue separately that regardless of Mr. Carter’s arguments, his breach of contract claims cannot proceed against the individual defendants, as opposed to the University. After reviewing this in detail, Mr. Carter concedes his breach of contract claim cannot proceed against the individual defendants.

In his first point in his opening brief, Mr. Carter explained that dismissing his breach of contract claim for this reason was error because taking his allegations in his petition as true, his damages were capable of ascertainment in March 2013, not August 2012 as the respondents argued (Brief of the Appellant [“Aplt.Br.”] 34-46).

A. Taking Mr. Carter’s allegations as true, his injuries were not capable of ascertainment in August 2012.

The respondents concede that a breach of contract claim accrues when a reasonably prudent person would be placed on notice of a potentially actionable injury (Resp.Br. 19). They contend Mr. Carter was on notice in August 2012 of his damages from communications concerning his placement on an Alternate Curriculum Plan (“ACP”) (Resp.Br. 20-23). This is incorrect.

In his opening brief (Aplt.Br. 37-39), Mr. Carter pointed to *Martin v. Crowley, Wade & Milstead, Inc.*, in which this Court held laypeople like Mr. Carter do not have the affirmative duty to investigate and uncover professional error. 702 S.W.2d 57, 58 (Mo. banc 1985). Instead, they may rely on professional representations unless facts exist that reasonably would alert them that their reliance is misplaced. *Id.*

The respondents seek to distinguish *Martin* by arguing Mr. Carter *did* double-check the administrators’ decision when he requested academic probation instead of the ACP (Resp.Br. 23).

But merely questioning a professional’s initial recommendation is not enough to trigger accrual. *Thorne v. Johnson*, 483 S.W.2d 658, 663 (Mo. App. 1972). In *Thorne*, this Court rejected the argument that a negligence claim accrued when a recorded deed omitted from a certified abstract was

theoretically discoverable. *Id.* Although the deed had been recorded for years, the Court held it would be “absurd” to require laypeople, after hiring a professional abstractor, to independently verify the abstract’s accuracy. *Id.* Accrual occurs when damage is capable of ascertainment, not on a technical breach. *Id.* Rather, while the plaintiffs were bound to the “constructive knowledge of documents which have been duly recorded,” they had “performed their duty with respect to examining the public record when they hired a professional abstractor to examine all documents on file and make a report.” 483 S.W.2d at 663.

Taking his allegations as true and drawing all inferences in his favor, Mr. Carter’s conduct falls squarely within *Martin* and *Thorne*. When he was told the ACP was the only viable means to rehabilitate his GPA and remain in the Program, he consulted with three administrators including a dean (D30 pp. 8-9). Although he initially requested academic probation, a path school policy permitted (D30 p. 8), the administrators rejected that request and characterized it as unrealistic (D30 pp. 8-9).

As a student layman, once Mr. Carter received those professional recommendations, the law did not require him to conduct an independent investigation into academic policy interpretation or the ACP’s downstream consequences to his GPA. *Thorne*, 483 S.W.2d at 663. Like the abstract company in *Thorne*, which was in the business of reviewing public records, the university administrators Mr. Carter consulted were responsible for advising students on university policy. A reasonable juror could find that at most, his initial request for an alternative was a brief hesitation or clarifying

question before ultimately relying on three professionals' advice. To treat that exchange as double-checking would effectively require all laypeople with minor questions to independently investigate professional advice. That is precisely what this Court rejected as "absurd" in *Thorne*. 483 S.W.2d at 663.

Nothing in August 2012 told Mr. Carter the ACP would fail to provide him the promised benefit. At most, what happened in August 2012 reflected his reliance on professional advice, which is not notice of injury.

B. The amended petition supports accrual no earlier than March 2013, making Mr. Carter's action timely.

The respondents argue Mr. Carter was "*actually informed* of the facts giving rise to his claims back in August 2012" (Resp.Br. 26) (emphasis in original). But that assertion conflicts with the amended petition, which the Court construes liberally in his favor. *Martin*, 702 S.W.2d at 57.

Mr. Carter pleaded he was assured in August 2012 that the ACP was necessary to rehabilitate his GPA and for him to remain in the Program (D30 pp. 8-9). He relied on those assurances (D30 pp. 9-10).

It was not until March 8, 2013 that administration first told him he had to earn a "D+" or lower in the original course to qualify for a grade adjustment (D30 p. 11). Shortly thereafter, Ms. Kleffner informed him that because his original grade was too high, repeating the course under the ACP in fact would not result in any grade adjustment (D30 pp. 10-12).

Only then did Mr. Carter learn the ACP could not actually provide the tangible benefit that he was told justified its imposition. The March 2013 written notice transformed his August 2012 reliance into an awareness of harm. Before March 2013, Mr. Carter had no indication the GPA

rehabilitation he was promised was in fact illusory. Therefore, taking his allegations as true, the earliest that his damage was capable of ascertainment was shortly after March 8, 2013 (D30 p. 11).

C. Accrual is a question of fact precluding dismissal.

Finally, Mr. Carter explained in his opening brief that accrual here is a jury question (Aplt.Br. 45-46). This is because “when contradictory or different conclusions may be drawn from the evidence as to whether the statute of limitations has run, it is a question of fact for the jury to decide.” *Powell v. Chaminade Coll. Preparatory, Inc.*, 197 S.W.3d 576, 585 (Mo. banc 2006) (citation omitted).

The respondents say this is “unavailing” because “there can be no serious dispute that [his] damages were ascertainable as a matter of law in August 2012” (Resp.Br. 27). This case’s procedural history shows otherwise.

In Mr. Carter’s original action, a university administrator moved to dismiss on statute-of-limitations grounds (Tr.1 at 20), which the trial court denied (D53). After Mr. Carter refiled (D29; D30 pp. 1-2), a different trial court granted dismissal (D63; D64). So, two courts reviewing materially similar allegations reached opposite conclusions. Accrual is not “absolutely clear” from the face of the petition and there is a “serious dispute.”

Because at the very least reasonable jurors could differ on when Mr. Carter’s damages were capable of ascertainment, the trial court could not resolve this issue as a matter of law. *Powell*, 197 S.W.3d at 585. Accordingly, the trial court erred in dismissing his petition as time barred.

II. Point II: Mr. Carter’s breach of contract claim was within the statute of limitations because the University’s actions created a continuing injury.

In his second point, Mr. Carter explained that granting dismissal on the basis of the statute of limitations also misapplied that statute. The University’s false representations about the Program’s accreditation and its refusal to provide him with the correct transcripts created a continuing injury that delayed accrual until he withdrew from the Program (Aplt.Br. 47-53).

The respondents argue the continuing-wrong doctrine does not apply because “there is only one wrong alleged: that Mr. Carter was not able to graduate in six years from the University with a medical degree” (Resp.Br. 29). That again fails to take Mr. Carter’s allegations as true.

The continuing-wrong doctrine applies where an injury persists from day-to-day and is capable of being terminated. *Davis v. Laclede Gas Co.*, 603 S.W.2d 554, 556 (Mo. banc 1980). Mr. Carter alleged two ongoing, terminable breaches independent of the ACP (Aplt.Br. 50-53).

A. Misrepresentations regarding accreditation constitute a continuing wrong.

Mr. Carter alleged the University represented to enrolled and prospective students that all six years of the Program were accredited (D30 pp. 16-17). That was false (D30 pp. 15-17). Only Years 3-6 were accredited (D30 pp. 15-16). The University had the ability to disclose this limitation (D30 p. 15) yet marketed the Program as fully accredited while charging Years 1 and 2 students professional-level tuition (D30 pp. 2, 16).

These are allegations of ongoing misconduct. Each day the first two years of the Program remained unaccredited inflicted fresh financial and

academic injuries. This conduct was plainly capable of termination through truthful disclosure. And this Court held in *Davis* that ongoing, terminable misconduct delays accrual. 603 S.W.2d at 556.

The respondents rely on *Brantl v. Curators of Univ. of Mo.*, 616 S.W.3d 494, 496 (Mo. App. 2020), to argue Mr. Carter knew his damages in August 2012 (Resp.Br. 31). But *Brantl* involved a single injury: the plaintiff's termination. *Id.* at 498. The plaintiff was notified of the injury in a termination letter. *Id.* This Court held the later expiration of his contract did not cause his claims to accrue but made the damages more knowable. *Id.*

Here, conversely, Mr. Carter alleged the University continued performing the contract improperly day after day, semester after semester. Each continued misrepresentation and tuition charge was a new breach, independent of the ACP (Appt.Br. 51-52). More importantly, any notice relating to the ACP would not inform Mr. Carter that Years 1 and 2 lacked accreditation.

The respondents' position would allow a defendant to continue misrepresenting material contract terms indefinitely so long as the plaintiff discovered some unrelated injury earlier. That is not the law of Missouri.

B. The refusal to issue a compliant transcript also created a continuing injury.

In his opening brief, Mr. Carter also explained that the University's refusal to issue a transcript that complied with its published policy constituted a continuing injury (Appt.Br. 52-53).

The respondents argue that accrual requires only "that *some* damages have been sustained, so that the claimants know they have a claim for some

amount” (Resp.Br. 29) (quoting *D’Arcy & Assocs., Inc. v. K.P.M.G. Peat Marwick, L.L.P.*, 129 S.W.3d 25, 29 (Mo. App. 2004)) (emphasis added by the respondents). They argue the continuing wrong doctrine cannot apply to the University’s failure to provide Mr. Carter with a proper transcript because he was aware of “some damage” in August 2012 when he entered into the ACP (Resp.Br. 32-33).

But a continuing injury does not accrue in the same way as an injury “resulting from one completed, wrongful act” *Id.* at 30. Instead, a continuing injury results from an ongoing, terminable misconduct, and actually delays accrual. *Davis*, 603 S.W.2d at 556.

Taking Mr. Carter’s allegations as true and drawing all inferences in his favor, the University made a separate promise unrelated to the ACP in a published policy to provide students with transcripts containing separate GPAs for undergraduate and graduate work (D30 p. 14). Despite this, the University issued Mr. Carter a combined transcript (D30 pp. 14, 16), which has prevented him from obtaining admission to other academic programs (D30 p. 15).

Therefore, the continuing wrong doctrine applied because Mr. Carter properly alleged an ongoing harm that could be easily terminated through compliance with the stated policy. The trial court erred in dismissing Mr. Carter’s breach of contract claim as time barred for this reason, too.

III. Point III: Mr. Carter stated a claim for breach of contract, as the University made false representations about the Program's accreditation.

In his third point, Mr. Carter explained that the defendants' argument that his amended petition failed to state a claim for breach of contract misapplied the law (Aplt.Br. 55-60). The University made an identifiable contractual promise that the Program was fully accredited, which it failed to honor despite charging premium tuition rates and denying enrolled students scholarship opportunities (Aplt.Br. 55-60).

The respondents argue Mr. Carter failed to "identify the existence of a valid contract" (Resp.Br. 36). They rely on *Lucero v. Curators of Univ. of Mo.*, in which this Court held that "[i]n order to make a submissible case of breach of contract, the complaining party must establish the existence of a valid contract, *the rights of plaintiff and obligations of defendant under the contract*, a breach by defendant, and damages resulting from the breach." 400 S.W.3d 1, 5 (Mo. App. 2013) (emphasis in the original) (citation omitted). Mr. Carter also discussed *Lucero* in his opening brief (Aplt.Br. 56).

The respondents interpret *Lucero* to mean "that ordinary contract principles still apply in any action a student brings against a university for breach of contract" (Resp.Br. 34). They argue Mr. Carter's claim did not conform to these principles because he did not specifically identify consideration and mutual promises in the amended petition (Resp.Br. 35-37).

The respondents are incorrect. Mr. Carter properly pleaded all the necessary elements for a breach of contract claim and because the University made an identifiable promise that the Program was fully accredited.

A. Mr. Carter pleaded the essential elements of a breach of contract.

First, the respondents are wrong that Mr. Carter had to specifically identify consideration and mutual promise in order to avoid dismissal.

Missouri is a fact-pleading state requiring “ultimate facts, not evidentiary facts.” *Matthews v. Harley-Davidson*, 685 S.W.3d 360, 366 (Mo. banc 2024). “Ultimate facts are those the jury must find to return a verdict for the plaintiff.” *Id.* Rule 55.04 provides that “no technical forms of pleading or motions are required.” On a motion to dismiss, courts determine only whether the petition states a claim, not whether it ultimately will prevail. *Bell v. Shelter Gen. Ins. Co.*, 701 S.W.3d 614, 618 (Mo. App. 2024).

A breach of contract claim requires a plaintiff to prove: “(1) the existence and terms of a contract; (2) the plaintiff performed or tendered performance ... ; (3) breach of the contract by the defendant; and (4) damages” *Id.* The existence of a contract between a student and a university is shown where the student “point[s] to an identifiable contractual promise that the [university] defendant failed to honor.” *Lucero*, 400 S.W.3d at 5. These promises may arise from brochures, policy manuals, or advertisements. *Id.*

Mr. Carter’s petition satisfies these elements. First, he alleged the University advertised the Program as fully accredited and represented that students were classified as medical students from the outset (D30 p. 16). That is a sufficiently identifiable contractual promise.

Second, he alleged he enrolled in the Program from fall 2011 through December 2014 (D30 pp. 4, 14), paid premium tuition, and was denied

scholarship opportunities (D30 pp. 16-17). These allegations demonstrate performance.

Third, he alleged the University later admitted that only Years 3-6 were included in accreditation review (D30 p. 15). That constitutes breach of the promise that the Program was fully accredited.

Finally, he alleged damages: he paid professional-level tuition for Years 1 and 2, received a substandard medical education, and was denied financial benefits associated with undergraduate classification (D30 pp. 16-17). These allegations “properly stat[e] a claim for breach of contract and surviv[e] a motion to dismiss.” *Bell*, 701 S.W.3d at 618.

The respondents’ insistence on pleading specific consideration or mutuality elevates evidentiary detail over ultimate facts, contrary to Missouri’s pleading standards.

B. The University made an identifiable promise that the Program was fully accredited.

Second, the respondents’ argument that no contract exists because Mr. Carter did not allege he was “personally promised” the Program was fully accredited (Resp.Br. 38) (emphasis removed) is not the standard.

In his opening brief, Mr. Carter explained that Missouri has a history of recognizing that university representations can form contractual promises (Aplt.Br. 56-58) (citing *Niedermeyer v. Curators of Univ. of Mo.*, 61 Mo. App. 654, 662 (1895), and *Martin v. Lindenwood Univ.*, No. 4:20-CV-1128 RLW, 2021 WL 3077665, *at 6 (E.D. Mo. July 21, 2021)).

The respondents’ only response to *Niedermeyer* is that it predates *Lucero* (Resp.Br. 38). That is irrelevant. *Niedermeyer* remains good law and

is consistent with *Lucero*, which confirmed that promises in brochures and advertisements can support a breach-of-contract claim. 400 S.W.3d at 5.

The respondents attempt to distinguish *Martin* as non-binding and “substantially distinct” from Mr. Carter’s claims (Resp.Br. 39). While of course *Martin* is not binding on this Court, it fits neatly into *Lucero* and *Niedermeyer*. And the claims in *Martin* are not as distinct as the respondents suggest. There, the court held that marketing materials, differential tuition pricing, and institutional conduct were sufficient at the motion-to-dismiss stage to allege a contractual expectation as to the nature of the educational experience. *Id.* Mr. Carter alleged materially comparable facts here.

Finally, the respondents characterize the University’s statements as merely general promises of a future degree (Resp.Br. 38). That misstates Mr. Carter’s allegation that the Program promised students would take medical coursework “from Day 1” and that “[u]pon entering the B.A./M.D. program, students are classified as professional students. They begin studying medicine on their first day and clinical experience begins immediately” (D30 p. 16). He further alleged the University continued advertising the Program as fully accredited as recently as 2022-2023 (D30 p. 16). These are present-tense representations about the Program’s status, not conditional promises about what would happen on completing the Program. Accreditation status is not aspirational language. It is an objectively verifiable condition.

Taking the allegations in Mr. Carter’s amended petition as true and construing them in his favor, he identified a contractual promise and alleged performance, breach, and damages. The trial court erred in dismissing it.

IV. Point IV: Mr. Carter stated a claim for breach of contract, as the University had an obligation to provide him with a transcript containing separate grade point averages for his undergraduate and graduate coursework.

In his fourth point, Mr. Carter explained that he also stated a breach of contract because the University made an identifiable contractual promise, published on its website, to provide transcripts separating grade point averages for undergraduate and graduate coursework, which it failed to honor (Aplt.Br. 61-66).

A. The Program falls within the University’s transcript policy.

The respondents argue the transcript policy cannot support a contract claim because Mr. Carter was enrolled in a joint B.A./M.D. program that the policy did not specifically reference (Resp.Br. 40). This is untrue.

Mr. Carter included the transcript policy in his amended petition, which expressly applies to students who completed undergraduate and graduate work in medicine (D30 p. 14). He alleged he enrolled in the “six-year medical program” (D30 p. 4), was classified as a professional student, and completed “medical school coursework from Day 1” (D30 p. 16). Accepting these allegations as true and construing them in his favor, the joint program falls within the scope of the policy.

At the motion-to-dismiss stage, the question is whether the amended petition plausibly alleges that the policy applied. It does.

B. Mr. Carter adequately alleged consideration.

The respondents also argue that no valid contract exists because Mr. Carter did not allege consideration for the transcript (Resp.Br. 41). This misstates both Missouri law and the petition.

Mr. Carter explained above at pp. 15-16, the essential elements of a breach of contract claim do not separately require pleading consideration as a standalone element.

In any event, payment of tuition constitutes consideration. *Niedermeyer*, 61 Mo. App. at 658. Mr. Carter alleged he was enrolled at the University and completed graduate and undergraduate work while paying tuition (D30 pp. 4-7, 10-11, 14). Construed in his favor, these allegations sufficiently plead consideration supporting the contractual relationship, part of which were the University's obligations related to academic records.

C. The transcript policy imposed a mandatory contractual obligation.

Mr. Carter reiterated above at pp. 16-17 that a student can bring a breach of contract claim against a university for identifiable promises in the university's policies, manuals, and advertisements. The only limitation is that the promise may not be "aspirational in nature." *Soueidan v. St. Louis Univ.*, 926 F.3d 1029, 1035 (8th Cir. 2019).

The respondents argue the University's transcript policy was merely a "general statement" that "did not confer any contractual rights" (Resp.Br. 43). That is inconsistent with Missouri law. Academic records are part of the bargained-for educational services.

In his opening brief, Mr. Carter pointed to *Doe v. Univ. of Mo.*, where the court held university policies create contractual obligations when they are "concrete, mandatory, and unmistakable." No. 19-CV-04229-NKL, 2022 WL 4043458, at *30 (W.D. Mo. Aug. 30, 2022) (Aplt.Br. 63-64). The respondents argue "*Doe* is nothing like the present case" because the transcript policy is a

“single statement” comparable to the non-discrimination policy deemed aspirational in *Doe* (Resp.Br. 42-43). This mischaracterizes *Doe*’s holding.

In *Doe*, the court distinguished between general non-discrimination language, deemed aspirational, and specific procedural regulations that imposed enforceable obligations. *Id.* at *29-30. The non-discrimination policy only expressed a broad commitment to refrain from discriminatory behavior. *Id.* at *29. It did not mandate any administrative action. *Id.* Conversely, Regulation 600.030 outlined specific Title IX procedures, which were enforceable. *Id.* at *30.

Here, the transcript policy was not aspirational. Mr. Carter alleged the University’s webpage stated that a student transcript *will* provide separate grade point averages for undergraduate and graduate work (D30 p. 14). The term “will” is mandatory, not permissive. BLACK’S LAW DICT. 1598 (6th ed. 1990). The policy, while simple, is also concrete. It sets a specific administrative requirement: how transcripts *will* be structured for students completing undergraduate and graduate coursework. Therefore, unlike advisory or value-based statements, this language describes a concrete institutional practice.

Mr. Carter alleged that despite this mandatory language, the registrar issued him a transcript combining his undergraduate and professional GPAs (D30 pp. 14-17). Taking these allegations as true, the University failed to follow its own stated procedure, constituting a breach.

V. Point V: Mr. Carter stated a claim for breach of contract, as the University refused to place him on academic probation in violation of its policy manual.

In his fifth point, Mr. Carter explained that he also sufficiently pleaded a breach of contract claim because the University's COE Manual mandated he be placed on academic probation (Aplt.Br. 67-69). Instead, he was forced to enter an Alternate Curriculum Plan ("ACP") that required him to repeat Year 1 coursework (Aplt.Br. 67-69).

A. Mr. Carter pleaded the essential elements of a breach of contract.

The respondents argue they "did not enter into a contract with Mr. Carter" and made no promise that he would be placed on academic probation (Resp.Br. 44). They again challenge contract formation (Resp.Br. 44).

As Mr. Carter explained above at pp. 16-17, a student states a breach of contract claim by alleging an identifiable contractual promise, performance, breach, and damages. He also explained there that while consideration is not a separately required element at the motion-to-dismiss stage, tuition payments would satisfy it if necessary.

Construing the amended petition in Mr. Carter's favor, he sufficiently alleged each element.

First, Mr. Carter alleged the COE Manual provided that "a student will be placed on" academic probation if the student earns a failing grade (D30 p. 7). He also alleged that once promoted to Year 2, an ACP was no longer appropriate under Program policies (D30 p. 7). These allegations identify a specific, mandatory promise sufficient to establish the existence and terms of a contract.

Second, he alleged he satisfied the criteria for promotion to Year 2 at the conclusion of his first year (D30 p. 6). This demonstrates performance.

Third, he alleged that after receiving a failing grade in a Year 2 course the University placed him on an ACP rather than academic probation (D30 pp. 6-7). Accepting the allegations as true, this violated the COE Manual's mandatory language and constitutes breach.

Finally, he alleged damages: as a result of being placed on the ACP, he was required to retake Year 1 coursework he had already completed and passed (D30 pp. 6-7).

Accordingly, the amended petition stated a claim.

B. The COE Manual is not a general policy.

The respondents argue the COE Manual “contains guidelines or statements of policy” that are not enforceable (Resp.Br. 45). They compare the COE Manual to the student handbook in *Lucero*, 400 S.W.3d at 6. But the handbook language in *Lucero* was aspirational, expressing commitments to a positive environment without prescribing specific procedures. *Id.*

Here, unlike in *Lucero*, the COE Manual sets a definite procedure to follow when a Year 2 student earns a failing grade (D30 p. 7). The use of “will be placed on” academic probation is concrete, not aspirational. This aligns with the enforceable policy provisions the district court recognized in *Doe* that imposed concrete obligations on the university's actions.

Because the COE Manual created a specific, mandatory procedure and Mr. Carter alleged it was not followed, he stated a valid breach of contract claim. The trial court erred in dismissing it.

VI. Point VI: Mr. Carter stated a claim for breach of contract, as the University refused to adjust his GPA according to his performance in the alternative curriculum.

In his final point, Mr. Carter explained that he also stated a sufficient breach of contract claim where University policy and administrative communications promised he would qualify for a GPA adjustment on completing the ACP, but he later was denied the adjustment despite completing it (Aplt.Br. 70-73).

The respondents argue the statements the university administrators made were not contractual promises because the conversations merely “reflect enforcement and interpretation of grading policies” (Resp.Br. 47). This is yet another challenge to contract formation.

As Mr. Carter explained above at pp. 16-17, a student states a breach of contract claim by alleging an identifiable contractual promise, performance, breach, and damages. And consideration is not a separately required element at the motion-to-dismiss stage, but tuition payments would satisfy it if necessary. *See id.*

Construing the amended petition in Mr. Carter’s favor, he sufficiently alleged each element of this breach, too.

First, the combination of the COE Manual’s policy regarding GPA adjustments with the administrator’s personal representations of how the ACP would operate plainly establish a contract. Dr. Harris stated the ACP was necessary to “help bolster [Mr. Carter’s] science GPA” (D30 p. 9). Ms. Kleffner further confirmed by email that he would qualify for a GPA adjustment (D30 pp. 4, 11). The ACP itself required him to retake cell

biology and functional anatomy and complete additional upper-level science coursework, which would be factored into his science GPA (D30 p. 10).

The University's policies corroborated these representations (D30 p. 10). Mr. Carter alleged the COE Manual mandates that "[i]f a science course is repeated, **only** the final grade **is** used in the science GPA calculation (the initial grade earned in a repeated course will be dropped only from the cumulative science calculation)" (D30 p. 10) (emphasis added). Therefore, these allegations establish the terms of the contract.

The respondents argue the GPA adjustment policy cannot form the basis of a contract because it is "a general policy statement concerning GPA calculations that applied to all students" (Resp.Br. 48). This is untrue.

Not only does the policy strictly limit its application to science GPAs and students retaking science courses (D30 p. 10), it also specifically describes a procedure for the University to follow in the event a student repeats a science course (D30 p. 10). Once again, this policy aligns with the enforceable regulations in *Doe*, because it imposed a concrete obligation on the actions of the University once certain conditions were met. 2022 WL 4043458, at *30. Additionally, the policy's language mandates that "only the final grade is used" when calculating a student's GPA once a science course has been repeated (D30 p. 10). There is nothing aspirational about this.

Second, Mr. Carter alleged he satisfied the ACP in May 2013, receiving an "A" in every course he took (D30 p. 10). This demonstrates performance.

Third, Mr. Carter alleged in that March 2013, Ms. Kleffner informed him he did not qualify for a GPA adjustment in functional anatomy because

his original grade was too high (D30 p. 11). Then, in October 2013, she informed him that his new grade in cell biology also no longer would replace his previous failing grade in GPA calculations “due to accreditation demands” (D30 p. 11). His elective courses also were omitted from his science GPA and would not count towards his undergraduate degree either (D30 pp. 11-12). Accepting the allegations as true, this violated the terms of the contract.

Finally, Mr. Carter alleged that on these revelations the ACP offered him no tangible benefit (D30 p. 12). He said his science GPA was then retroactively recalculated so that it fell just below the Program’s minimum 2.80 GPA requirement (D30 p. 12). As a result, he was informed he would be required either to repeat his second-year courses or withdraw from the Program (D30 p. 12). He then did withdraw in December 2014 (D30 p. 14). This constitutes damage.

Accordingly, the amended petition stated a claim for breach of contract for this breach too. Dismissing Mr. Carter’s breach of contract claim was error.

Conclusion

The Court should reverse the trial court's judgment dismissing Mr. Carter's breach of contract claim against the University and remand this case for further proceedings on that claim.

Respectfully submitted,

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Certificate of Compliance

I certify that I have prepared this brief using Microsoft Word for Office 365 in 13-point, Century Schoolbook font, which is not smaller than 13-point, Times New Roman font. I further certify that this brief complies with the word limitations of Supreme Court Rule 84.06(b) and this Court's Rule 41, as this brief contains 5,107 words.

/s/Jonathan Sternberg

Attorney

Certificate of Service

I certify that I signed the original of this brief of the appellant, which is being maintained by Jonathan Sternberg, Attorney, P.C. per Rule 55.03(a), and that on February 27, 2026, I filed a true and accurate Adobe PDF copy of this brief of the appellant and its appendix via the Court's electronic filing system, which notified the following of that filing:

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