IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JOSHUA CARTER,	)	
	)	
Appellant,	)	
	)	**WD87975**
v.	)	
	)	**OPINION FILED:**
	)	**August 4, 2026**
THE CURATORS OF THE UNIVERSITY OF MISSOURI,	)	
	)	
Respondent.	)	

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Adam L. Caine, Judge

Before Division One: Gary D. Witt, Presiding Judge, Mark D. Pfeiffer, Judge, and Thomas N. Chapman, Judge

Mr. Joshua Carter ("Carter") appeals the judgment of the Circuit Court of Jackson County, Missouri ("trial court"), which dismissed with prejudice his petition for breach of contract, unjust enrichment, and promissory estoppel against the Curators of the University of Missouri ("UMKC") and individual members of UMKC's faculty. Carter appeals only the dismissal of his breach-of-contract claims. And, during the pendency of this appeal, Carter dismissed his appeal with respect to the individual faculty members. Thus, this appeal considers only whether Carter has pleaded sufficient facts to support an

actionable claim for breach of contract against UMKC. Because Carter has pleaded sufficient facts—at this early litigation stage—to sustain some but not all of the theories of breach of contract that he alleges, we affirm in part and reverse in part.

Factual and Procedural History[1]

In August 2011, Carter enrolled in UMKC's joint B.A./M.D. program (the "Program"), which offered an accelerated six-year track for the completion of a medical degree. Carter successfully completed his first year of the Program without incident.

During the following summer, Carter took several Year 2 courses. In August 2012, Carter learned that he had received a "D" in one of his summer courses: Cell Biology, a course required to advance from Year 2 of the Program to Year 3.

On August 1, 2012, UMKC faculty emailed Carter informing him that he would not advance to Year 2 of the Program due to this unsatisfactory grade and that he must instead follow an Alternative Curriculum Plan ("ACP"), which would require extending the Program by an additional year. The same day, Carter responded to the email by citing provisions in the Council on Evaluation's Policy Manual & Guidelines ("Manual") for the Program that indicated: (1) Cell Biology is a Year 2 course not required for advancement from Year 1 to Year 2, and (2) a student who fails a required Year 2 course should be placed on academic probation rather than an ACP. Carter further requested to follow a schedule that would allow him to retake Cell Biology while continuing on the

[1] On review of a motion to dismiss, "[w]e view the facts contained in the petition as true and in the light most favorable to the plaintiff." *Defoe v. Am. Fam. Mut. Ins. Co.*, 526 S.W.3d 236, 239 (Mo. App. W.D. 2017) (quoting *Truman Med. Ctrs., Inc. v. McKay*, 505 S.W.3d 799, 801 (Mo. App. W.D. 2016)).

standard track for the Program. UMKC faculty rejected Carter's request and insisted that he complete an approved ACP—in contradiction to the Manual.

On August 7, Carter received an email containing his approved ACP. The ACP required Carter to retake Year 1 courses, including Cell Biology and Functional Anatomy—a Year 1 course that he passed with a "C"—and to take three biology electives not required by the Program's ordinary track. Carter again objected to the proposed ACP because it required him to retake courses from Year 1: he faxed a copy of the email to the assistant dean of UMKC's medical school with his concerns, and later that day, his father called the assistant dean. The assistant dean reiterated that Carter would only be allowed to continue the Program if he agreed to the terms of the ACP. And, he further told Carter's father that the ACP would help bolster Carter's science GPA, which he needed to maintain at a 2.80 to remain in the Program. Carter eventually agreed to satisfy the terms of the ACP.

For the Fall 2012 semester, Carter took the three required biology electives (General Biology II, Histology, and General Parasitology), as well as Functional Anatomy and Cell Biology. He received an "A" in each course. Carter believed that these grades would substantially improve his science GPA for two reasons: (1) the Manual's policy stating, "[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)[,]" and (2) the email containing Carter's ACP, which represented that the three biology electives would factor into his science GPA for purposes of the Program.

After completing this semester, Carter learned that *none* of these courses would favorably affect his science GPA calculation in the manner that had been promised by UMKC. On March 8, 2013, Carter was informed that his new grade in Functional Anatomy would not factor into his science GPA calculation because his original grade, a "C," was not eligible for grade-replacement. Then, on April 29, 2013, Carter was informed that none of his biology electives were eligible for inclusion in the Program's science GPA calculation. Finally, on October 8, 2013, Carter was informed that his second Cell Biology grade would not fully replace his original grade; instead, the two grades would be averaged together in Carter's science GPA calculation.

Despite the unexpected changes to his science GPA calculation, Carter advanced from Year 1 to Year 2. For the academic year beginning Fall 2013, Carter's third year on campus, he completed the curriculum for Year 2 of the Program. At the end of this academic year, Carter's science GPA fell below the required 2.80 threshold. He was informed that he would not advance to Year 3 of the Program and that he could either repeat his Year 2 courses or withdraw from the Program. Carter elected to withdraw from the Program and went on to graduate one semester later in December 2014 with an undergraduate degree in biology. In his petition, Carter alleges that, if UMKC had calculated his science GPA as it had promised, then he would not have fallen below the 2.80 threshold and he would have proceeded towards obtaining an M.D. degree under the Program.

In 2016, Carter requested his transcript from UMKC's registrar. The UMKC Registration and Records webpage provided that student transcripts would contain

"separate grade point averages for undergraduate, graduate, medicine, dentistry, law and pharmacy programs." Nonetheless, when Carter received his transcript, all of his coursework within the joint B.A./M.D. program was reported in his undergraduate GPA. The registrar refused Carter's request to separate his joint B.A./M.D. coursework into undergraduate versus graduate coursework and to re-calculate his cumulative undergraduate GPA. Carter alleges that, as a result of UMKC's refusal, his cumulative undergraduate GPA is artificially low, damaging his opportunity to gain admission into other graduate programs. Additionally, Carter later learned that the first two years of the Program had not been accredited as medical school curriculum by the Liaison Committee on Medical Education.

Carter first filed suit against UMKC in Missouri state court on March 2, 2018. In the original petition, Carter included a federal claim against UMKC, which led to the defendants removing the suit to federal court. The federal trial court found that Carter's complaint failed to adequately plead facts sufficient to support a federal claim, dismissed that portion of the complaint, and remanded the case back to Missouri state court. After further litigation, Carter voluntarily dismissed his petition without prejudice pursuant to Rule 67.02(a) (2022)[2] on July 1, 2022, and subsequently refiled it on June 12, 2023.

As relevant to this appeal, Carter's final amended petition alleged the UMKC breached multiple separate contractual promises by: (1) changing the requirements of the Program by requiring Carter to complete an ACP even though the Manual's policies

[2] All rule references are to I MISSOURI COURT RULES – STATE 2025 unless otherwise indicated.

would have allowed Carter to advance in the Program subject to academic probation; (2) failing to calculate Carter's science GPA in accordance with the grade-replacement procedures outlined in the Manual and with the representations made in the ACP email; (3) failing to separate Carter's medical school and non-medical school coursework into two separate GPAs on his transcript in accordance with the policy on the registrar's webpage; and (4) failing to seek medical-school accreditation for the first two years of the joint B.A./M.D. program despite representing that the Program was fully accredited.

In response, UMKC filed a motion to dismiss Carter's petition. With respect to the breach-of-contract claims, UMKC argued (1) that Carter's petition failed to plead a breach-of-contract claim because Carter failed to identify any promise or representation by UMKC that is sufficiently specific to constitute a contractual promise and (2) that even if Carter did adequately plead such a claim, it was barred by the applicable statute of limitations.

In its judgment, the trial court summarily granted UMKC's motion to dismiss without specifying the basis for its judgment; therefore, we presume the trial court dismissed Carter's claims on the grounds raised in UMKC's motion to dismiss. *See Palisades Collection, LLC v. Watson*, 375 S.W.3d 857, 860 (Mo. App. W.D. 2012) ("As the Judgment did not specify the basis for this determination, we presume it to be the grounds stated in the motion to dismiss." (citing *Walters Bender Strohbehn & Vaughan, P.C. v. Mason*, 316 S.W.3d 475, 478 (Mo. App. W.D. 2010))).

Carter timely appealed. In his six points on appeal, Carter argues the trial court erred in concluding that his breach of contract claim was untimely and that he failed to plead facts sufficient to support a claim for breach of contract.

Standard of Review

"We review the trial court's grant of a motion to dismiss de novo." *DeFoe v. Am. Fam. Mut. Ins. Co.*, 526 S.W.3d 236, 239 (Mo. App. W.D. 2017) (quoting *Truman Med. Ctrs., Inc. v. McKay*, 505 S.W.3d 799, 801 (Mo. App. W.D. 2016)). "A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition." *Bell v. Shelter Gen. Ins. Co.*, 701 S.W.3d 614, 618 (Mo. banc 2024). We review the petition "in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action or of a cause [of action] that might be adopted in that case." *Keveney v. Mo. Mil. Acad.*, 304 S.W.3d 98, 101 (Mo. banc 2010). "This Court reviews the facts only to determine whether they state a claim for relief, not whether the plaintiff will ultimately prevail on the relief requested." *Bell*, 701 S.W.3d at 618 (citation modified).

"A breach of contract action includes the following essential elements: (1) the existence and terms of a contract; (2) that plaintiff performed or tendered performance pursuant to the contract; (3) breach of the contract by the defendant; and (4) damages suffered by the plaintiff." *Id.* (quoting *Keveney*, 304 S.W.3d at 104). "A petition alleging facts that meet these elements properly states a claim for breach of contract and survives a motion to dismiss." *Id.*

Although Carter's petition only includes one labeled count for breach of contract, his petition is sufficient to survive a motion to dismiss if any of the facts alleged within that count could support a breach-of-contract claim:

> The rule is well established in Missouri that the character of a cause of action is determined from the facts stated in the petition and not by the prayer or name given the action by the pleader. To determine the cause of action, the facts stated in the petition along with the relief sought are considered rather than the form of the petition. To be deemed sufficient, a petition need not even label the theory upon which a plaintiff seeks recovery.

Sprint Lumber, Inc. v. Union Ins. Co., 627 S.W.3d 96, 119 (Mo. App. W.D. 2021) (citation modified).

Analysis

Points I and V

In Points I and V, Carter argues the trial court erred in dismissing his claim for breach of contract based on a statute-of-limitations defense (Point I) and because Carter argues that UMKC breached its implied contract with Carter by changing the requirements to advance in the Program (Point V). Our analysis of Point I is dispositive of both of these points on appeal.

Carter's claim for a breach of an implied contract falls under the scope of Missouri's five-year statute of limitations, which includes "[a]ll actions upon contracts, obligations or liabilities, express or implied" unless excepted.[3] *See* § 516.120(1).[4]

[3] Neither party argues that any of Carter's theories for breach of contract fall within an exception to the five-year statute of limitations.

[4] All statutory references are to THE REVISED STATUTES OF MISSOURI (2016), as supplemented through March 2, 2018, unless otherwise indicated.

Because Carter first filed his cause of action for breach of contract on March 2, 2018,[5] his claim is timely and, therefore, actionable only if it accrued on or after March 2, 2013.

Under Missouri law, a cause of action accrues and begins to run the applicable statute of limitations when the plaintiff could have reasonably ascertained it:

> Civil actions, other than those for the recovery of real property, can only be commenced within the periods prescribed in the following sections, after the causes of action shall have accrued; provided . . . the cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, *but when the damage resulting therefrom is sustained and is capable of ascertainment* . . . .

§ 516.100 (emphasis added). Stated another way, we look to the moment when a reasonably prudent person would be on notice of a potentially actionable injury claim:

> Although this Court has not previously clearly articulated a specific, generally applicable test to be used in making this determination, a consistent approach is evident upon careful review of this Court's decisions from the last 40 years: the statute of limitations begins to run when the evidence was such to place a reasonably prudent person on notice of a potentially actionable injury.

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[5] Although Carter later voluntarily dismissed his suit against UMKC without prejudice and refiled it well outside the five-year statute of limitations, the refiled suit would be timely because it was filed within one year of the voluntary dismissal if the original suit was timely filed:

> Generally, a nonsuit occurs when a court order terminates a cause of action without prejudice. However, under Rule 67.02, a voluntary dismissal constitutes a nonsuit because it allows a plaintiff to dismiss a civil action without prejudice and without order of the court any time prior to the introduction of evidence at trial. Accordingly, the savings statute allows a plaintiff to refile an action within one year of the date of the voluntary dismissal.

Rickner v. Golfinopoulos, 271 S.W.3d 32, 34 (Mo. App. W.D. 2008) (citation modified); *see also* § 516.230 ("If any action shall have been commenced within the times respectively prescribed in sections 516.010 to 516.370, and the plaintiff therein suffer a nonsuit[] . . . such plaintiff may commence a new action from time to time, within one year after such nonsuit suffered or such judgment arrested or reversed[.]").

Powel v. Chaminade Coll. Preparatory, Inc., 197 S.W.3d 576, 582 (Mo. banc 2006) (citation modified). This standard does not require that the plaintiff actually ascertain the full amount of damages; rather the statute of limitations begins to run when the plaintiff is on notice of some substantial and legally actionable damage:

> Notice of some substantial damage resulting from the wrong was also identified as the triggering event in *Dixon v. Shafton*, 649 S.W.2d 435 (Mo. banc 1983). Four partners signed a contract without being informed by their fifth partner, an attorney, about a clause in the contract that ultimately caused them damage. Although the wrong had existed and had been at least theoretically ascertainable since the inception of the contract, the statute of limitations did not begin to run until the lawyer-partner advised the remaining partners that they should get independent counsel because he had made a mistake in the contract. At that point, *although the remaining partners did not know the extent of their damages*, they did know that a substantial claim existed as to them. They had suffered some damage, at least to the extent that they had to hire new counsel who would have otherwise been unnecessary.

Id. at 583 (emphasis added) (internal quotation marks omitted).

Here, Carter alleges that his enrollment at UMKC created an implied contract guided by the policies in the Manual: "[UMKC] entered into contract with Plaintiff, under which [UMKC] specifically promised Plaintiff that he would receive a degree following completion of courses and other requirements listed in the contracts." Carter alleges the following breach of this contract: "[UMKC] breached the agreement by changing the course work and other requirements necessary to complete the Program and obtain the degree."

According to Carter's petition, UMKC first breached this implied contract on August 1, 2012, when it refused to promote Carter to Year 2 of the Program and indicated that it would instead place him on an ACP—even though the Manual, which identified

policies for the Program, dictated that Carter could advance to Year 2 subject to academic probation. Carter immediately recognized this violation of the Manual's policies and raised his objection to UMKC, highlighting the relevant contradictory portions of the Manual and illustrating that UMKC's proposed action would require him to unnecessarily extend his education by one year. In response, UMKC insisted that Carter must follow an approved ACP and, by August 7, UMKC finalized and forwarded an approved ACP that required Carter to complete the Program in seven years rather than the six years promised under the ordinary curriculum plan.

Therefore, by August 7, Carter knew that UMKC's proposed ACP deviated from the original requirements of the Program as identified in the Manual—a breach of the alleged implied contract he claims exists. Further, Carter could have reasonably ascertained that this deviation would result in substantial damage: Carter would spend an additional year of his time in the Program and pay the cost of an additional year of instruction for courses not ordinarily required to complete the Program. Thus, Carter's petition demonstrates that he had notice of an actionable claim for breach of the contract purportedly implied by his enrollment no later than August 7, 2012,[6] causing this claim to accrue at that time and to run the five-year statute of limitations in full before Carter filed his lawsuit. Because Carter did not file his original suit until March 2, 2018, his implied contract claim is time-barred.

[6] We acknowledge the possibility that Carter's claim for breach of contract could have accrued as early as August 1, 2012. But, for the purpose of this appeal, we need only decide that Carter's claim accrued no later than August 7, 2012.

Carter argues his claim did not accrue until March 8, 2013—when UMKC acknowledged that Carter's grade in his retaken Functional Anatomy course, which Carter completed as part of the ACP, would not replace his earlier grade in the course. As we discuss in our analysis of Point VI, this allegation of breach is separate and apart from Carter's alleged breach relating to UMKC's requirement that Carter participate in an ACP in the first instance. While we agree with Carter's argument on Point VI, Carter *also* contends that, until March 8, 2013, he could not have reasonably ascertained an actionable claim for breach of contract relating to the requirement that he participate in an ACP because (1) he reasonably deferred to UMKC's "expertise" regarding the necessity of the ACP and (2) because he had reasonably believed that the ACP was "properly" drafted. We disagree that the alleged breach relating to the ACP requirement could not have been reasonably ascertained prior to March 8, 2013.

We begin with the second argument—that Carter could not have ascertained his breach-of-contract claim relating to the ACP requirement until he learned that the ACP deviated from his expectations. We reject this argument because *any* purported drafting error in *the ACP* is irrelevant to Carter's alleged breach of contract involving *the Manual* and any policies contained therein as relevant to the ACP breach allegation. Under Carter's pleaded theory, UMKC breached the contract purportedly implied by his enrollment in the Program when it failed to follow the terms of *the Manual*. Carter alleges UMKC violated *the Manual's* terms when UMKC refused to promote him to Year 2 of the Program after he completed all necessary requirements and instead placed him on an ACP. Thus, the alleged breach arises from UMKC placing Carter on *any ACP*

at all, not any particular deficiency with the drafting of the ACP itself. To illustrate, even if the ACP had been "properly" drafted and had improved Carter's science GPA as he expected, Carter still would have suffered harm from UMKC placing him on the "properly" drafted ACP because his duration in the Program would have still been unnecessarily extended by one year. Carter ascertained this precise and substantial harm no later than August 7, 2012.

To support his other argument—that he reasonably deferred to UMKC's expertise regarding the necessity of an ACP—Carter cites to *Martin v. Crowley, Wade & Milstead, Inc.*, 702 S.W.2d 57 (Mo. banc 1985), for the proposition that a plaintiff has no affirmative obligation to double-check the work of a hired professional for potential errors that could give rise to an actionable claim. *See id.* at 58 ("We hold, that from the pleadings, involving a layman/expert relationship, nothing indicates plaintiffs knew or should have known of any reason, until May, 1981, to question defendant's work. Under these circumstances, plaintiffs had no duty to double check defendant's work. Hence under the facts alleged the damages were not 'capable of ascertainment' in October, 1973.").

However, *Martin* and the line of cases it relies on do not apply to Carter's pleaded allegations. In those cases, the plaintiffs could have only uncovered their potential causes of action through exercising specialized expertise. *See id.* at 58-59 (applying the layman-professional relationship rule to an error committed by a professional surveyor and discussing the prior application of that rule in cases involving malpractice by attorneys and professional abstractors). Here in contrast, ascertainment of an actionable claim did

not require specialized expertise; rather, Carter needed only to review the available policies in the Manual, which demonstrated that Carter satisfied the requirements to advance to Year 2 and provided that he should not have been required to retake Year 1 courses under an ACP for failing a required Year 2 course. Because Carter could have *and did* identify the contradiction between UMKC's proposed ACP and the terms of the Manual without any specialized expertise, his claim accrued on August 7, 2012.

Because we conclude that any claim for breach of an implied contract predicated on UMKC placing Carter onto the ACP in violation of the UMKC Manual is time-barred, we need not and do not decide whether Carter's allegations relating to the ACP were otherwise sufficient to state a cause of action for breach of contract.

Points I and V are denied.

Point III

In Point III, Carter argues the trial court erred in dismissing his breach-of-contract theory arising from UMKC's failure to maintain the Program's accreditation status as it allegedly promised. Carter alleges that UMKC represented the entire Program as fully accredited as a medical school and that UMKC violated this representation because, in reality, only Years 3-6 of the Program are accredited by the Liaison Committee on Medical Education.[7]

[7] Carter makes no specific allegation that Years 1 and 2 of the Program are completely unaccredited—only that they are not accredited by the body responsible for accrediting medical schools in the United States. Carter's completion of his undergraduate degree in biology at UMKC just one semester after leaving the Program strongly suggests that a large portion of the coursework he completed during the Program counted towards his undergraduate degree.

To support his claim that UMKC implied a promise that the entirety of the joint B.A./M.D. Program was accredited as a medical school, he alleges the following: (1) that UMKC represented the Program was fully accredited and violated this representation because Years 1 and 2 were not accredited; (2) that UMKC "knowingly misled students into believing that they were receiving an accredited, medical education"; (3) that UMKC represented "that students would be taking medical school coursework from Day 1" and that UMKC violated this promise because students did not receive medical school credit for that coursework; (4) that UMKC promised students entering the Program that they "would be taking coursework that would count toward their medical school" and that UMKC's lack of accreditation violated this promise because not all coursework counted toward a medical degree; and (5) that UMKC charged a "premium tuition rate to all first[-] and second-year students under the guise that these students were taking graduate courses when in fact they were not."

None of these allegations demonstrate that UMKC promised or implied that *all* six years of its *joint* B.A./M.D. program were accredited as a medical school.

Carter's own petition admits that UMKC presents the Program as a *joint* B.A./M.D. program. While this representation creates an expectation that *some* Program coursework would count towards the completion of a medical degree (i.e., M.D. degree), it also creates the expectation that *some* Program coursework would count towards a bachelor's degree (i.e., B.A. degree). Therefore, UMKC's representation that successful completion of the Program would result in a medical degree from a fully accredited medical school *does not* suggest that *every individual course* taken within the Program

would count towards that medical degree or that every year within the Program would be accredited as medical school education.

Carter fails to allege any specific representation by UMKC regarding which courses would count towards his undergraduate B.A. degree and which courses would count towards his graduate M.D. degree. Because Carter fails to allege that UMKC specifically promised that any course in his first two years would directly count towards his graduate medical degree (rather than his undergraduate bachelor's degree), he fails to allege that UMKC ever implied or explicitly promised that Year 1 or Year 2 would be accredited as medical-school accredited coursework.

Furthermore, we conclude that UMKC did not breach any other promise or representation as a result of its lack of medical-school accreditation for Years 1 and 2 of the Program. Although Carter alleges that his medical-school-level coursework only counted towards his undergraduate degree, he *does not* allege that UMKC did not permit him to take medical school curriculum or training. To the contrary, Carter specifically alleges that he took medical school curriculum and participated in hospital-based clinical education. Although these courses did not count towards Carter's M.D. degree, they satisfy UMKC's alleged promise: that students in the Program would participate in medical school curriculum and begin training immediately as part of the Program.

Carter also fails to allege that UMKC promised that the curriculum and training he participated in during Year 1 of the Program would specifically count toward his M.D. degree rather than permitting him to proceed on the *joint* B.A./M.D. Program's *path* to *both* a bachelor's degree *and* a medical degree on an accelerated timeline. Regarding

Carter's allegation that UMKC failed to honor its promise that students would take coursework that would count towards an M.D. degree, Carter's petition acknowledges that Years 3-6 of the Program are accredited as a medical school; thus, if Carter had completed the Program in its entirety, his collective curriculum and training under the Program would have resulted in an M.D. degree from a fully accredited medical school—fulfilling UMKC's promise.

As to Carter's final argument that UMKC implied Years 1 and 2 would count directly towards his medical degree, Carter alleges that UMKC charged higher tuition for Program enrollees when compared to other undergraduate students at UMKC[8] and UMKC classified Program enrollees as "professional students[,]" rendering them ineligible for scholarships available to other undergraduate students at UMKC. To support this argument, Carter primarily relies on a case in which a federal trial court applied Missouri contract law: *Martin v. Lindenwood Univ.*, No. 4:20-CV-1128 RLW, 2021 WL 3077665 (E.D. Mo. July 21, 2021).

First, because *Lindenwood* was decided by a federal trial court, its application of Missouri law does not bind this Court: "[t]hough meriting our respect, decisions of the federal district and intermediate appellate courts and decisions of other state courts are

[8] Although we accept this allegation as true, we note that Carter's petition does not include the tuition rate paid by ordinary undergraduate students at UMKC, preventing any comparison between the rate paid by them and the rate paid by Program enrollees. Furthermore, Carter states that the "average" tuition across all six years of the Program exceeds $25,000 per year. But, Carter does not indicate whether UMKC charges different tuition rates for Years 1 and 2 of the Program—which are not accredited as medical-school education—than for Years 3-6—which are accredited as medical-school education.

not binding on us." *McGuire v. Kenoma, LLC*, 375 S.W.3d 157, 167 n.9 (Mo. App. W.D. 2012) (quoting *Doe v. Roman Cath. Diocese of St. Louis*, 311 S.W.3d 818, 823 (Mo. App. E.D. 2010)).

Second, the presently alleged facts are distinguishable from *Lindenwood*. In *Lindenwood*, Lindenwood University offered two different tuition rates for the *same degree programs* depending on whether completed online or in person. 2021 WL 3077665 at *3 ("The Court finds that Lindenwood's website appears to offer online programs that are at a different price point than the full-time and part-time semester tuition programs. Based upon the website and Martin's allegations, Lindenwood appears to place a cost difference between in-person and online learning." (citation modified)). After Lindenwood could not offer in-person education during the spring 2020 semester due to the COVID-19 pandemic, a federal trial court concluded a plaintiff class of students who paid in-person tuition alleged facts sufficient for their breach-of-contract claim to survive a motion to dismiss when Lindenwood refused to reduce their tuition to the online rate. *Id.* at *1-2, *5-6. Critically, the federal district court reasoned that the plaintiff class had alleged Lindenwood impliedly promised that it would provide in-person instruction by heavily advertising the benefits of its on-campus education and by charging substantially more in-person tuition in comparison to its online tuition:

> At this early stage of the litigation, the Court holds that Martin alleges that Lindenwood's publications, marketing, pricing, agreements, policies, and established course of conduct created an expectation that [the student] was paying for an in-person college experience. *Notably, Martin alleges he signed up for and paid for a full-semester tuition, not the on-line pricing option*.

Id. at *6 (emphasis added) (citation modified). Thus, in *Lindenwood*, the plaintiff class alleged they were deprived of the key factor differentiating between the online and in-person tuition rates.[9]

Here, in contrast, Carter himself alleges that UMKC advertised many benefits of the Program that would justify the allegedly higher tuition rates: allowing students the opportunities to gain clinical experience and to take medical school coursework while still an undergraduate student and providing a pathway to completing undergraduate and medical school education in only six years. *Carter does not allege he was denied these benefits*.

Furthermore, Carter does not plead any facts indicating that UMKC specifically suggested that *all* of Carter's coursework throughout the joint B.A./M.D. curriculum program would apply to his M.D. degree. UMKC's website materials and pricing structure do not create an expectation to support the conclusion that UMKC charged Program enrollees higher tuition due to an implied promise that the first two years of the Program were accredited as a medical school. Rather, as is clear from the allegations of Carter's petition, it was the duality (B.A. and M.D. degrees) and accelerated timeline (six years) that made the Program different than pursuit of a traditional separate B.A. degree followed by application to and completion of a M.D. degree.

Point III is denied.

[9] Because we find the facts of *Lindenwood* distinguishable, we need not and do not decide whether the *Lindenwood* court correctly applied Missouri contract law.

Point IV

In Point IV, Carter argues the trial court erred in dismissing his claim for breach of contract arising from UMKC's refusal to separately report GPAs for his undergraduate and medical school coursework.

To support his claim, Carter alleges in his petition that UMKC's Registration and Records webpage contains the following policy: the "student transcript will contain 'separate grade point averages for undergraduate, graduate, medicine, dentistry, law and pharmacy programs.'" Carter alleges UMKC breached this promise because UMKC failed to separate Carter's undergraduate and medical school coursework when providing his transcript, lowering the undergraduate GPA that Carter reports when seeking admission to other graduate academic programs.

Crucially, to the extent that this policy on UMKC's webpage could be construed to support a contractual promise, UMKC promises only that it will report separate *program* GPAs. Here, Carter enrolled in a *single program*: UMKC's joint B.A./M.D. program. Carter does not allege any further representations by UMKC regarding how GPAs for *courses* taken within a *joint program* would be reported on a transcript. Nor does Carter allege that UMKC specifically represented how his individual courses within the Program would be categorized in his transcript. Therefore, although UMKC classifies all of Carter's courses taken during Year 1 and Year 2 of the Program as undergraduate credits, Carter has failed to allege that this action violates any specific promise or representation made by UMKC. Carter failed to adequately plead facts supporting a breach-of-contract claim under this theory.

Point IV is denied.

Point II

In Point II, Carter argues that the alleged breaches of contract discussed in Points III and IV constituted continuing wrongs that "extended" the statute of limitations for his breach of contract. We disagree.

The continuing-wrong doctrine can apply to breach-of-contract claims where the plaintiff pleads a continuous breach of contract that creates a "fresh injury from day to day." *See Davis v. Laclede Gas Co.*, 603 S.W.2d 554, 556 (Mo. banc 1980). In such circumstances, the continuing-wrong doctrine allows the plaintiff to recover any damages stemming from wrongful acts committed within the statute-of-limitations period. But, where the defendant commits only a single, completed wrong that results in continuing damages, the continuing-wrong doctrine does not apply:

> When there is only one wrong, even if it results in continuing damage, the cause of action accrues when that wrong is committed and the damage sustained is capable of ascertainment. The fact that the alleged effects of that act are continuing and even expanding does not transform the act into a continuing wrong.

Brown v. Pint, 632 S.W.3d 453, 460 (Mo. App. W.D. 2021) (citation modified).

Here, the "wrong" that Carter alleges to have caused "continuing injury" was a single, completed wrong that was ascertainable outside the applicable statute-of-limitations period. Carter's allegations are merely that there are "continuing injur[ies]" from the single and completed "wrong" and, hence, his allegations do not fall within the continuing-wrong extension of the applicable statute-of-limitations period.

Point II is denied.

Point VI

In Point VI, Carter argues the trial court erred in dismissing his claim for breach of contract because he alleged facts sufficient to demonstrate UMKC breached its contractual promise that it would factor the courses taken during the ACP into his science GPA and that UMKC failed to do so. We agree.

"In 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." *Cent. Am. Health Scis. Univ. v. Norouzian*, 236 S.W.3d 69, 84 (Mo. App. W.D. 2007) (quoting *Wasson v. Schubert*, 964 S.W.2d 520, 524 (Mo. App. W.D. 1998)). A university's promises to a student can constitute a contract when sufficiently specific. *See id.* at 83-84 (holding that a handwritten note signed by the dean of a medical school promising a reduction in tuition constituted sufficient evidence to support a finding of an enforceable contract). Additionally, a university's representations to the general student body through its materials can create an enforceable contract:

> Missouri law, therefore, requires [the student] to identify which rights or obligations [the university] breached under the contract in order to establish a claim for breach of contract. This requirement *is consistent with case law from other jurisdictions* addressing contractual liability between students and universities.
>
> As both parties recognize, other jurisdictions have held that an educational institution's *brochures, policy manuals and other advertisements* may form the basis of a legally cognizable contractual relationship between the institution and its students.

Lucero v. Curators of Univ. of Mo., 400 S.W.3d 1, 5 (Mo. App. W.D. 2013) (emphasis added) (citation modified) (reviewing a university's policies to determine if they could support a contractual promise and concluding that, under the alleged facts, none of the policies cited by the plaintiff amount to a contractual promise); *see also Niedermeyer v. Curators of Univ. of Missouri*, 61 Mo. App. 654, 662 (Mo. App. 1895) ("After the proposition contained in the catalogue of 1892 and 1893 had been accepted by plaintiff, and the rights of the plaintiff had thereby become fixed, it was not within the power of the defendants to alter or abridge those rights by withdrawing the proposition and publishing that contained in the catalogue of 1893 and 1894.").

However, "not every dispute between a student and a university is amenable to a breach of contract claim. Rather, in order to assert a breach of contract claim against a university, a student plaintiff *must point to an identifiable contractual promise* that the university defendant failed to honor." *Lucero*, 400 S.W.3d at 5 (emphasis added) (citation modified). Statements or representations by a university that are merely aspirational do not constitute specific promises and are not actionable. *Id.* at 6.

To support the theory that UMKC breached a contractual promise regarding the calculation of his science GPA, Carter relies on three alleged specific representations.

First, Carter alleges that the Manual established the following policy regarding a retaken class: "[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)." Carter alleges that UMKC violated the Manual by failing to drop his original grades in Functional Anatomy and Cell Biology from his

science GPA calculation—even though he retook both courses and scored much higher upon retaking the courses.

UMKC responds that this Manual policy is merely aspirational, and like the policies discussed in *Lucero*, it cannot support a contractual promise. *See id.* at 7 ("The identified rules, regulations, and bylaws are more akin to general policy statements expressing Respondent's aspiration to provide a positive work and learning environment. Such provisions do not represent *objective or quantifiable promises* made by Respondent; rather, they are merely general promises pronouncing Respondent's intent to maintain an ethical environment for its faculty and students. Thus, the provisions identified by Appellant regarding a proper learning atmosphere cannot form the basis of a breach of contract claim." (emphasis added)).

We conclude the present facts are distinguishable from *Lucero*. As noted in *Lucero*'s analysis, the provisions at issue there did not include any identifiable, concrete action that the university obligated itself to perform in order to achieve its aspirational objective. Here, in contrast, the Manual does not merely express a general sentiment that students could benefit academically from retaking a science course; it provides a concrete mechanism for directly improving a student's science GPA if the student chooses to retake a science course. This objective, specific, and express representation by UMKC in the Manual is sufficiently concrete to support a contractual promise by UMKC.

Second, Carter alleges that his father called the assistant dean of UMKC's medical school to raise his concerns about the ACP's noncompliance with the Manual. During the conversation, the assistant dean allegedly responded to these concerns by

emphasizing that the ACP would "bolster" Carter's science GPA to help him comply with the Program's minimum science GPA requirement. Unlike the representations in the Manual, this statement does not reference any particular action that UMKC promised to perform under the ACP that would "bolster" Carter's science GPA; therefore, the statement is merely an unenforceable aspiration rather than a contractual promise (though this statement may be relevant to the issues remaining to be resolved in this case).

Finally, Carter alleges that the email containing the finalized version of the ACP affirmatively represented that the three biology electives required by the ACP would factor into Carter's science GPA calculation in the Program and that, nonetheless, UMKC ultimately excluded the courses from his science GPA calculation. As with the Manual policies, this representation included a promise that UMKC would take a concrete, identifiable action if Carter completed the three biology electives. Thus, as alleged, it is sufficiently concrete to support a contractual promise.[10]

[10] Although this theory of breach of contract relies on a specific written instrument, i.e., the ACP email allegedly containing the written promise to include the biology electives in Carter's science GPA, Carter does not recite the verbatim language of the operative writing or attach a copy of the writing to his pleadings in apparent violation of Rule 55.22(a). *See* Rule 55.22(a) (2023) ("When a claim or defense is founded upon a written instrument, the same shall be recited verbatim in the pleading, or a copy shall be attached to the pleading as an exhibit."). However, Carter's Rule 55.22(a) violation was not asserted as a basis for UMKC's motion to dismiss and is thus only relevant to a defect in the proceedings that does not presently impact our discussion of whether, at this juncture, Carter has sufficiently alleged facts which, if true, support his cause of action for breach of contract. *See Bieser v. Woods*, 150 S.W.2d 524, 526 (Mo. App. 1941) ("The failure to file such an exhibit is merely a defect in the proceedings and does not go to the question of failure of the petition to state a cause of action."). In absence of the exact language of the writing, we must presume that Carter's paraphrasing accurately captures its substance.

Carter further alleges that, if UMKC had abided by these contractual promises, his science GPA would have been high enough to continue the Program without retaking his Year 2 classes—a clearly defined "damage." Thus, in combination with his "damages" allegations, Carter alleged facts sufficient to support two separate theories of breach of contract: (1) UMKC failed to replace the prior grades in Carter's retaken courses from his science GPA calculation and (2) UMKC failed to include the three biology electives in Carter's science GPA calculation. The trial court erred in dismissing these theories for failure to state a claim for breach of contract.

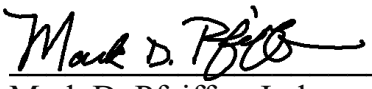
Importantly, the facts alleged in Carter's petition demonstrate that he could not have ascertained that UMKC breached its promises regarding his science GPA calculation until March 8, 2013—when UMKC informed him via email that his original Functional Anatomy grade was not eligible to be replaced in his science GPA calculation—and April 29, 2013—when UMKC notified him that his biology elective coursework would be omitted from his science GPA calculation. Thus, these two theories for breach of contract fall within the applicable five-year statute-of-limitations period. The trial court erred in dismissing the petition with respect to these two theories for breach of contract as being barred by the statute of limitations.

Point VI is granted.

Conclusion

The judgment of the motion court is reversed regarding Carter's two theories for breach of contract against UMKC pertaining to his science GPA calculation. In all other

respects, the judgment is affirmed. The case is remanded for further proceedings consistent with our ruling today.



Mark D. Pfeiffer, Judge

Gary D. Witt, Presiding Judge, and Thomas N. Chapman, Judge, concur.