



CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

Court Rules that University Does Not Need to Return Loan Proceeds to a Bankruptcy Estate

BY ROBERT G. YOUNG • JUNE 29, 2018

On June 19, the federal District Court for the District of Connecticut issued a [decision](#) allowing Johnson & Wales University to retain proceeds it received under a Federal Direct Parent PLUS Loan for the tuition of a student whose parents subsequently declared bankruptcy. The bankruptcy trustee sought to recoup those amounts for the bankruptcy estate, but the Court decided that the loan proceeds never were the property of the student's parents and, therefore, were not subject to recapture for the bankruptcy estate. The Court reasoned that the University obtained the loan proceeds directly from the Department of Education through an online portal and that the loan program itself — created under the Higher Education Act of 1965 — places strict statutory requirements on what the monies can be used for (and imposes criminal penalties for misuse of loan funds). Consequently, the Court found that the student's parents never had true control of the funds and they could not be considered part of the bankruptcy estate.

Client Tip: This case serves as a reminder that tuition monies received may, in some instances, be subject to repayment in bankruptcy proceedings. However, an institution should consider all available defenses in response to any demand for such repayment.