

Title IX Victories

Bailey Glasser has recently won major, ground-breaking settlements for female student-athletes at five universities that announced they were eliminating women's varsity intercollegiate athletic teams: **Brown University, the College of William & Mary, the University of North Carolina at Pembroke, East Carolina University, and Dartmouth College.**

Bailey Glasser has also won a historic settlement with **Clemson University** after the university faced class actions suits by both its male and female student-athletes for violating Title IX by discriminating against them in different ways.

In all six cases, Bailey Glasser and its co-counsel reached settlements enforcing Title IX – the federal law prohibiting gender discrimination by educational institutions receiving federal funds – and requiring the schools to reinstate the women's teams.

Brown University

In June 2020, Brown University announced that it was eliminating five women's teams and three men's teams, including twice as many women as men, from its intercollegiate athletic program. Bailey Glasser's Arthur Bryant was co-counsel in a 1992 landmark Title IX case against Brown for discriminating against its women athletes and potential athletes. The long-standing 1998 settlement agreement in that case, *Cohen v Brown University*, provided that, if Brown eliminated any women's team, its male and female intercollegiate athletic participation rates would have to be within 2.25% of their undergraduate enrollment rates. The announced changes would have violated that provision.

In a motion filed in the federal district court of Rhode Island, Bailey Glasser and its co-counsel moved to enforce the settlement agreement and hold Brown accountable for violating the Title IX requirement that "intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments."

After months of litigation – including the discovery and exposure of internal Brown emails calling the 1998 settlement "this pestilential thing" – Brown University agreed to reinstate its women's varsity equestrian and fencing teams. It further agreed to maintain full support for those teams and not to reduce their future support as compared to men's teams' support. Brown also agreed not to eliminate or reduce the status of any women's varsity team or add any men's team for at least the next four years, during which the University will be required to continue to comply with the consent decree it first agreed to in 1998.

The proposed settlement was announced on September 23, 2020. A federal court gave final approval to the settlement agreement on December 15, 2020. While the Brown University litigation was taking place, Bailey Glasser also challenged the College of William & Mary's efforts to violate Title IX by eliminating women's teams.

College of William & Mary

On September 3, 2020, William & Mary announced that it was eliminating its women's varsity gymnastics, swimming, and volleyball teams—and its men's varsity gymnastics, swimming, and track and field teams—effective at the end of the 2020-21 academic year.

On September 23, 2020, Bailey Glasser's Arthur Bryant, lead counsel for the women student-athletes, wrote to William & Mary President Katherine Rowe, told her he represented women on the three teams, and informed her that the elimination of those teams violated Title IX. His letter said that, if the school did not reinstate and continue the teams, he and his legal team would file a class action lawsuit in federal court to prevent their elimination and to hold William & Mary accountable for violating Title IX by depriving women athletes and potential athletes of equal opportunities, athletic financial aid, and treatment.

Bryant had previously threatened to sue William & Mary for violating Title IX in 1991, when it decided to eliminate its women's basketball and swimming teams, along with its men's swimming and wrestling teams. The school had quickly reinstated all four teams.

This time, a more far-reaching victory was reached. On October 19, 2020, to avoid being sued, William & Mary agreed to reinstate its women's gymnastics, swimming, and volleyball teams, develop a Gender Equity Plan, and bring its intercollegiate athletics program into compliance with all aspects of Title IX by the 2022-23 academic year. Then, on November 5, 2020, the school announced it was reinstating the men's teams, too.

University of North Carolina at Pembroke

Following those two cases, Bailey Glasser threatened suit under Title IX against the University of North Carolina at Pembroke (UNCP), which had announced that it was "suspending" women's varsity golf for at least two years to save money. On November 24, 2020, Arthur Bryant of Bailey Glasser's Oakland office wrote to UNCP's President on behalf of the team members and said the "suspension" violated Title IX. Bryant's letter said he and his co-counsel would file a class action lawsuit against UNCP for depriving women athletes and potential athletes of equal opportunities, athletic financial aid, and treatment unless the school agreed to reinstate the team and comply with Title IX.

Three and a half weeks later, on December 18, 2020, UNCP agreed to reinstate the women's golf team and develop a gender equity plan no later than December 31, 2021. As part of the agreement, the school agreed to solicit input for the plan from student-athletes for all teams and expressly invite participation by the women's golf team. The university also agreed it would post the plan on UNCP's athletics department's website and ensure that UNCP's intercollegiate athletic program complies with Title IX during the 2023-24 academic year and beyond.

East Carolina University

Similar results were achieved against East Carolina University (ECU), which announced in May 2020 that it was eliminating its women's (and men's) varsity swimming & diving and tennis teams. On November 16, 2020, Arthur Bryant wrote to ECU's Interim Chancellor, Dr. Ron Mitchelson, on behalf of the women's team members and informed him that the teams' elimination violated Title IX. Bryant said he and his co-counsel would file a class action lawsuit in federal court against ECU for depriving women athletes and potential athletes of equal opportunities, athletic financial aid, and treatment unless the school agreed to reinstate the teams and comply with Title IX. The settlement agreement, reached on January 7, 2021, avoids the need for the class action.

As part of the settlement, ECU agreed to immediately reinstate its women's swimming, diving, and tennis teams and develop a gender equity plan no later than December 31, 2021. The school will solicit input for the plan from student-athletes for all teams and expressly invite participation by the female swimming, diving, and tennis team members. It will post the plan on ECU's athletics department's website and ensure that ECU's intercollegiate athletic program complies with Title IX during the 2023-24 academic year and beyond. The university will continue to monitor and manage the plan on an on-going basis (including prior to its official adoption) to maintain and improve ECU's Title IX compliance.

Dartmouth College

In December 2020, Bailey Glasser turned its attention to Dartmouth College. On July 9, 2020, Dartmouth announced it was eliminating its women's varsity intercollegiate golf and swimming & diving teams (along with its men's golf, lightweight rowing, and swimming & diving teams). It said that, as result of the teams' elimination, "the percentage of women among varsity athletes will be virtually identical to the percentage of women in the undergraduate student body, ensuring compliance with Title IX."

On December 18, 2020, Arthur Bryant wrote to Dartmouth President Philip J. Hanlon on behalf of the women's team members and informed him that, according to the most recently available public numbers, that claim was false. Bryant's letter explained that the elimination of the women's teams violated Title IX and, as with the other schools, threatened to bring a class action in federal court against the school for depriving women of equal athletic participation opportunities, financial aid,

and treatment unless Dartmouth agreed to reinstate the women's teams and come into compliance with Title IX.

To avoid such a suit, on January 29, 2021, Dartmouth agreed to immediately reinstate its women's golf, swimming, and diving teams and develop a gender equity plan no later than March 15, 2022. It also announced that it was reinstating the men's teams. The school will solicit input for the gender equity plan from the female golf and swimming & diving team members and alumni, as well as members and alumni of other teams. It will post the plan on the Dartmouth athletics department's website and ensure that Dartmouth's intercollegiate athletic program complies with Title IX during the 2023-24 academic year and beyond.

Clemson University

In a precedent setting matter, Clemson University agreed to landmark settlements with both its male and female student-athletes for violating Title IX by discriminating against them in different ways. In November 2020, Clemson University announced plans to eliminate its men's outdoor track, indoor track, and cross country teams citing financial problems brought on by the pandemic among other reasons for needing to cut the teams.

On March 12, 2021, Arthur Bryant wrote to Clemson President James P. Clements on behalf of the men's team members and noted that, if the university eliminated the teams, it would be in violation of Title IX which, among other things, prohibits educational institutions from eliminating men's teams for which interest, ability, and competition are available unless "intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments." 44 Fed. Reg. 71418 (Jan. 16, 1996). Bryant threatened a class action on behalf of all male student-athletes and potential student-athletes at the school unless Clemson complied with Title IX and provided men with equal opportunities to participate.

Separately, on March 15, 2021, Lori Bullock of Newkirk Zwagerman, P.L.C., in Des Moines, IA, wrote to Clements on behalf of women's rowing, cross country, and track & field team members and informed him that, according to U.S. Department of Education data, the female student-athletes were not receiving equal athletic financial aid, treatment, or benefits. She said the women supported the male athletes' claims and would file their own class action on behalf of all female student-athletes and potential student-athletes unless the school complied with Title IX.

Clemson agreed to the history-making settlements with both the male and female student-athletes to avoid the threatened suits. The school will reinstate men's outdoor track & field under the agreements, continue men's indoor track & field and cross country, and add a new women's varsity team to ensure gender equity and enhance opportunities for all. It will conduct a gender equity review of its intercollegiate athletics program to develop and adopt a Gender Equity Plan by July 1, 2022, and implement the plan so all aspects of Clemson's intercollegiate athletic program comply

with Title IX in the 2023-24 academic year and future years. It will also take several very specific steps to provide its female student-athletes with equal athletic financial aid, treatment, and benefits while the Gender Equity Plan is being developed.

More to Come?

These six victories were all won since June 2020 and Bailey Glasser is far from done. Bryant and his co-counsel have recently informed California State University, Fresno that the elimination of their women's lacrosse team violates Title IX.

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