

Cohen v. Brown University Title IX Class Notice

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

Amy Cohen, et al. v. Brown University, et al., 1:92-cv-00197-JJM-LDA

ATTENTION: ALL PRESENT, FUTURE, AND POTENTIAL WOMEN STUDENTS AT BROWN UNIVERSITY WHO PARTICIPATE OR WILL SEEK TO PARTICIPATE IN INTERCOLLEGIATE ATHLETICS AT BROWN.

The United States District Court For The District Of Rhode Island Has Authorized This Notice. It Is Not A Solicitation Or Advertisement From A Lawyer. You Are Not Being Sued. You Have Received This Notice Because You Have Been Identified As A Person Who Is Or May Be A Member Of The Class In This Lawsuit, And The Proposed Settlement Of The Lawsuit, If Approved, May Affect Your Legal Rights. You Should Read This Notice Carefully.

If you are a present or future woman student at Brown University (“Brown”), or a potential woman student at Brown, and you participate or will seek to participate in intercollegiate athletics at Brown, you are a member of the class affected by this lawsuit. This is a court-authorized notice.

The purpose of this notice is to inform you of a proposed settlement relating to a class action lawsuit brought by Plaintiffs, women who were student-athletes at Brown, against Brown, its President, and its Athletic Director (together, “Defendants”), on behalf of a class of all present and future women students at Brown and potential women students who participate, seek to participate, and/or are deterred from participating in intercollegiate athletics at Brown.

The case is titled *Amy Cohen, et al. v. Brown University, et al.*, 1:92-cv-00197-JJM-LDA, in the United States District Court for the District of Rhode Island. The proposed settlement is set forth in Settlement Terms and a proposed Amendment to the Joint Agreement, which is an agreement between Plaintiffs and Defendants that has been in effect since 1998. The proposed settlement and Amendment must be approved by the United States District Court. This notice includes information about the proposed settlement, a Fairness Hearing scheduled by the Court, and the process for being heard by the Court.

In 1992, Plaintiffs filed this lawsuit alleging that Defendants had violated Title IX of the Education Amendments, 20 U.S.C. § 1681 (“Title IX”), which requires that Brown provide equal opportunities to men and women to participate in intercollegiate athletics. After years of litigation, the court ordered

Brown to present a plan to comply with Title IX. After negotiations, the named Parties reached an agreement, called “the Joint Agreement,” which the Court approved and entered in October 1998. The Joint Agreement requires Brown to adhere to certain gender proportionality requirements in its varsity athletics program. Specifically, the Joint Agreement requires that Brown provide varsity “participation opportunities” at a level such that “the percentage of each gender participating . . . is within [a fixed percentage] of each gender’s percentage in the undergraduate enrollment for the same academic year.” That percentage is 3.5%, unless Brown chooses to take certain actions, one of which is eliminating or replacing existing women’s varsity teams, in which case the permitted variance drops to 2.25%. Before May 2020, Brown had not made any changes to its intercollegiate athletic program that required a change in the permitted variance from 3.5% to 2.25%.

In 2020, Brown eliminated six men’s and five women’s intercollegiate teams from varsity status and announced that they would transition to club status. Brown then reinstated three of those men’s teams to varsity status, and the Plaintiffs filed a Motion alleging Brown was in gross violation of the required gender proportionality under the Joint Agreement. In response to Plaintiffs’ Motion, the Brown Defendants expressly denied that they were in violation of the Joint Agreement. After months of litigation, the parties have entered into a Proposed Settlement. This notice provides a summary of the Proposed Settlement and the impact that the Proposed Settlement will have on your rights. If you do not understand the information in this notice, you should contact one or more of the attorneys for the Plaintiffs listed at the end of this notice. You may also, if you want, contact your own attorney.

SUMMARY OF YOUR RIGHTS AND OPTIONS

YOUR OPTIONS

RESULTS

DUE DATE

ACCEPT OR DO NOT OPPOSE THE PROPOSED SETTLEMENT

If you accept or do not oppose the Proposed Settlement, you do not need to do anything. See Questions 5 and 6 for more information.

None

COMMENT ON OR OBJECT TO THE PROPOSED SETTLEMENT

If you want to comment on or object to the terms of the Proposed Settlement, you may tell the Court why you do or do not like the terms of the proposed settlement. Instructions for giving a comment or objection are described later in this notice. See Question 13 for more information.

November 24, 2020

APPEAR AT THE “FAIRNESS HEARING”

If you have filed a written comment or objection by November 24, 2020, and wish to be heard by the Court, you may appear virtually at the “Fairness Hearing” on December 15, 2020 at 9:30 a.m. See Questions 14 through 17 for more information.

December 15, 2020 at 9:30 a.m.

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Case Information

1. **What is the purpose of this Notice?** This Notice is to explain the lawsuit, the proposed settlement, and your legal rights and how to exercise them. Its purpose is to notify as many Class Members as possible of the proposed Settlement Terms and the proposed Amendment to the Joint Agreement, which include ending the Joint Agreement on August 31, 2024.
2. **What is this lawsuit about?** This lawsuit was filed in 1992 and originally settled with a Joint Agreement in 1998. The recent proceedings concerning Plaintiffs' Motion are about whether Brown's May and June 2020 changes to its athletics program violated the Joint Agreement and whether Brown must make changes to its athletics program to comply with the Joint Agreement.

In 1992, Plaintiffs filed this lawsuit alleging that Defendants had violated Title IX of the Education Amendments, 20 U.S.C. § 1681 ("Title IX"), which requires that Brown provide equal opportunities to men and women to participate in intercollegiate athletics. After years of litigation, the court found in favor of the Plaintiffs class on certain Title IX claims and ordered Brown to present a plan to comply with Title IX. After negotiations, the named Parties reached an agreement, called "the Joint Agreement," which the Court approved and entered in October 1998. The Joint Agreement requires Brown to adhere to certain gender proportionality requirements in its varsity athletics program and currently has no end date.

Specifically, the Joint Agreement requires that Brown provide varsity “participation opportunities” at a level such that “the percentage of each gender participating . . . is within [a fixed percentage] of each gender’s percentage in the undergraduate enrollment for the same academic year.” That percentage is 3.5%, unless Brown chooses to take certain actions, one of which is eliminating or replacing existing women’s varsity teams, in which case the permitted variance drops to 2.25%. Before May 2020, Brown had not made any changes to its intercollegiate athletic program that required a change in the permitted variance from 3.5% to 2.25%.

On May 28, 2020, Brown announced a restructuring of its athletic program that changed the measurement to 2.25%. Brown announced that 11 (six men’s and five women’s) of its varsity teams would be eliminated from varsity status and transitioned to club status: men’s and women’s fencing; men’s and women’s golf; women’s skiing; men’s and women’s squash; women’s equestrian; men’s indoor track and field; men’s outdoor track and field; and men’s cross country. Brown also announced that same day that it would be elevating sailing from club to varsity status as women’s sailing and co-ed sailing teams. On June 9, 2020, after considering, among other things, the impact that the changes would have on diversity in Brown’s athletics program, the University announced that it would reinstate men’s track and field and cross country to varsity status. Brown did not reinstate any of the five women’s teams on June 9. On June 10, 2020, counsel for the Plaintiff class notified Brown that Plaintiffs considered Brown to have grossly violated the Joint Agreement.

On June 29, 2020, Plaintiffs filed a Motion to Enforce Judgment, to Adjudge in Contempt, and for Emergency Relief, alleging that Brown’s planned changes to its athletics offerings had grossly violated the gender proportionality requirement of the 1998 Joint Agreement. Plaintiffs sought a court order requiring Brown to reinstate to varsity status the five women’s teams it had announced it would eliminate from varsity status and transition to club status until Brown demonstrated that it was in compliance with the Joint Agreement. In response to Plaintiffs’ Motion, the Brown Defendants expressly denied that they were in violation of the Joint Agreement.

1. **What is a class action lawsuit?** In a class action lawsuit, one or more persons called “Class Representatives” sue on behalf of other people who all have similar claims. The people who all have similar claims are called the “Class” or “Class Members.” The Class Representatives—and all Class Members like them—are called the plaintiffs. The parties they have sued are called the Defendants (in this case, Brown University, Brown President Christina H. Paxson, and Brown Athletic Director Jack Hayes). The lawyers who represent the Class are called “Class Counsel.” In a class action lawsuit, all factual questions and legal issues are resolved together for everyone in the Class in one case. Once the Court issues a final judgment in the class action lawsuit, that judgment will be binding on all Class Members.
2. **Why is there a Proposed Settlement?** The Court has not decided in favor of either the Plaintiffs or the Defendants on the pending Motion. Instead, all parties have agreed to a Proposed Settlement. By settling the claims, the parties can avoid the cost and uncertainty of continued

litigation and can resolve the Motion in a way that will benefit all parties. Class Counsel in this case think this Proposed Settlement is the best result for all current, potential, and future female athletes at Brown, who are members of the class. The Proposed Settlement will reinstate two of the transitioned women's varsity teams to varsity status and prohibit any further reductions in the women's varsity athletic program for at least approximately four years. The Proposed Settlement allows the Joint Agreement to end after approximately four years, after which Brown University will still have to comply with Title IX.

Those Who are Included in the Proposed Settlement

1. **Am I part of the Class?** According to the Court's order, all women students presently participating in intercollegiate varsity athletics at Brown, and those women students who seek to participate and/or are deterred from participating in intercollegiate athletics at Brown are part of the Class.
1. **Am I included in the Proposed Settlement?** If you are part of the Class, you will be included in the Proposed Settlement and it will apply to you if the Court approves the Proposed Settlement.

Proposed Settlement Terms

1. **What are the terms of the Proposed Settlement?** The complete Settlement Terms and proposed Amendment to the Joint Agreement are posted on the Brown website at <https://www.brown.edu/cohen-settlement-notice> and the websites of Public Justice <https://www.publicjustice.net/wp-content/uploads/2020/09/Brown-Settlement-Terms-and-Amendment-to-Joint-Agreement.pdf>; the ACLU of Rhode Island http://riaclu.org/documents/Brown_Settlement_Terms_and_Amendment_to_Joint_Agreement.pdf; and the law firm of Bailey Glasser <https://www.baileyglasser.com/assets/htmldocuments/Brown%20Settlement%20Terms%20and%20Amendment%20to%20Joint%20Agreement.pdf>.

The following is a summary of certain provisions of the settlement. The Proposed Settlement requires Brown to:

- Restore the following teams to varsity status:
 - Women's Equestrian; and
 - Women's Fencing.
- Refrain from adding any additional men's team to its varsity program unless:
 - Brown restores to varsity status a men's team that had been slated to transition from varsity to club status in May 2020; and
 - Brown also restores to varsity status a total number of women's teams that is at least two greater than the number of men's teams restored.

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- Refrain from reducing the status of or eliminating any women's varsity team for the remaining term of the Joint Agreement (through 8/31/2024).
- Maintain at least the same level of support for each varsity women's team it restores to varsity status that the team received before the team was transitioned from varsity status in May 2020.
 - The level of support provided may be reduced, however, if the overall level of funding for Brown's athletics program is also reduced.
 - If there are reductions in the overall level of funding for Brown's athletics program, Brown will not reduce overall funding for its women's teams any more than it reduces overall funding for its men's teams (with the exception that a team's operating budget may be reduced to reflect changes in expenses if its season is canceled due to COVID-19).
- Provide information to Class Counsel concerning the level of support for each of the restored teams, which information Brown reports to the U.S. Department of Education each year under the Equity in Athletics Disclosure Act (EADA), within 10 days of submitting that information to the U.S. Department of Education.

The Proposed Settlement further provides that:

- The requirements of the 1998 Joint Agreement will otherwise remain in effect until August 31, 2024, with the following modifications:
 - After August 31, 2024, while Title IX will continue to apply to Brown, the 1998 Joint Agreement and any additional requirements under this Settlement will no longer apply to Brown; and
 - Until the Joint Agreement expires on August 31, 2024, Brown will continue to abide by its gender proportionality requirement, which requires the percentage of each gender participating in Brown's intercollegiate athletic program to be within 2.25% of each gender's percentage in the full-time undergraduate enrollment for the same academic year.
 - Brown has elevated its sailing program to varsity status, which it has identified as separate women's and co-ed varsity teams. However, the Proposed Settlement provides that, under the Joint Agreement, each individual identified on one or more sailing squad list(s) shall only be counted as a single participant.
 - If the Court approves the Proposed Settlement, Brown has agreed to pay Plaintiffs' reasonable attorneys' fees, costs, and expenses, including expert witness fees.
1. **What are the benefits of the Proposed Settlement?** The benefits of the Proposed Settlement are that Brown will restore the women's equestrian and fencing teams to varsity status, guarantee their status and that of all other women's varsity teams for a minimum of approximately four years, and will count women and men involved in the co-ed and women's sailing teams only once as a measurement of its compliance under the Joint Agreement. The Proposed Settlement

will accomplish this without a drawn-out legal battle, during which Brown may or may not be required to reinstate one or more of the five women's varsity teams. If Plaintiffs' challenges to Brown's recent actions were unsuccessful, Brown would not be required to reinstate any of the five women's teams to varsity status. In the opinion of Class Counsel, the probability that the Court would require Brown to reinstate all five women's teams on a permanent basis is low. It is also expected that the Court would provide Brown the opportunity to create its own resolution, which would not likely include the reinstatement of any women's varsity teams since Brown previously stated it had no plans to do so. In the opinion of Class Counsel, the termination of the Joint Agreement in August 2024 will not adversely affect the members of the Class because Brown will continue to be required to comply with Title IX.

2. **What happens if the Proposed Settlement is approved?** If the Proposed Settlement is approved, the Settlement Terms will go into effect and the Class Members will be bound by the terms of the Proposed Settlement and the Order that implements it. Because the Proposed Settlement is an amendment to the original settlement in this case, all members are currently and will remain beneficiaries of the Joint Agreement while it is in effect. Class Members are currently unable to bring their own lawsuits regarding participation opportunities pursuant to Title IX. If the Proposed Settlement is approved, that restriction will end on August 31, 2024.
3. **How do I accept the Proposed Settlement?** You do not need to do anything to accept the Proposed Settlement. If you are a Class Member, you will receive the applicable benefits of the Amendment to the Joint Agreement.
4. **Can I get out of the Proposed Settlement if I don't like it?** If you are a Class Member, you cannot elect to get out of the Proposed Settlement if you do not like it. You can present an objection to the Court explaining your opposition and why you believe that it should not be approved for anyone. Those steps are described in Question 13.

The Lawyers Who Are Representing You

1. **Do I have a lawyer representing me in this case?** Yes. Class Counsel in this case are Lynette Labinger; Arthur Bryant of Bailey & Glasser, LLP; Leslie Brueckner of Public Justice, P.C.; and Jill Zwagerman and Lori Bullock of Newkirk Zwagerman, P.L.C. Their contact information is listed below. As Class Counsel, each attorney is required to represent the interests of the Class in this lawsuit.

Supporting or Objecting to the Proposed Settlement

1. **How do I tell the Court that I like or do not like the Proposed Settlement?** You can tell the Court why the Proposed Settlement should, or should not, be approved. You may submit a comment telling the Court that you like the Proposed Settlement and that you think it should be approved. You may also object to the Proposed Settlement by telling the Court that you do not like the Proposed Settlement and do not think it should be approved. The Court will consider

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comments and objections from Class Members. You are not required to submit any comments or objections.

To comment on or object to the Proposed Settlement, you must send a letter or email to the Clerk of the Court or have your attorney send a letter or email on your behalf. The letter or email must include the following information:

- your full name, mailing address, and email address where available;
- a statement that you are commenting on or objecting to the Proposed Settlement in *Cohen Brown University*, 1:92-cv-00197-JJM-LDA;
- the factual and/or legal reasons for your comment on or objection to the Proposed Settlement;
- any documents supporting your comment or objection;
- whether you would like to speak at the Fairness Hearing (see Question 17 below); and
- your signature or that of your attorney.

The deadline to submit a comment or objection is November 24, 2020. You must mail or email your comment or objection to the Clerk of the Court so it is received no later than November 24, 2020.

Email: rid_ecf_intake@rid.uscourts.gov

Subject line: Re: *Cohen v. Brown*, 92-197, Fairness Hearing

Clerk of the Court

U.S. District Court for the District of Rhode Island

Federal Building and Courthouse

One Exchange Terrace

Providence, RI 02903

Please also provide a copy of your comment or objection by mail or email to counsel for Plaintiffs (LL@labingerlaw.com or Lynette Labinger, 128 Dorrance St., Box 710, Providence, RI 02903) and counsel for Defendants (rcorrente@whelancorrente.com or Robert Clark Corrente, Whelan Corrente & Flanders LLP, 100 Westminster Street (Suite 710), Providence, RI 02889) at the time you send it to the Court.

If you comment on or object to the Proposed Settlement, you should explain your reason for doing so. The Court may reject any comments or objections that it deems frivolous or that are made for an improper purpose. You are not required to submit a comment or objection. Class Counsel will still

represent the collective interests of the Class. If you choose not to submit a comment or objection, you will waive your right to be heard individually at the Fairness Hearing on whether to approve the Proposed Settlement and any right of appeal that you may have.

Fairness Hearing

1. **What is the Fairness Hearing?** The Fairness Hearing is a session of the Court during which the Court will hear arguments from the lawyers for the parties, and possibly from Class Members, on whether the Court should approve the Proposed Settlement. At this hearing, the Court will consider whether the Proposed Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may or may not choose to hear testimony and receive additional evidence to help the Court make its decision.

After the Fairness Hearing, the Court will decide whether to approve the Proposed Settlement. There is no specific deadline for the Court to issue its decision.

1. **When and Where will it Occur?** The Fairness Hearing will take place on December 15, 2020 at 9:30 a.m. virtually. For the Zoom link, the week of the hearing, please go to: <https://www.rid.uscourts.gov/public-access-telephonic-and-video-hearings>.
2. **Do I Have to Attend the Fairness Hearing?** No. Class Counsel will answer any questions that the Court has and will make arguments on behalf of the entire Class. Even though you are not required to attend, you may participate in the hearing at your own expense. If you send a comment or an objection, you do not have to attend the hearing. As long as you send your comment or objection according to the requirements of Question 13, the Court will consider it. You may also pay your own lawyer to participate, but it is not necessary.
3. **May I Speak at the Fairness Hearing?** You and/or your attorney may ask the Court's permission to speak at the hearing concerning the Proposed Settlement. To do so, you must send a notice that you would like to speak by **November 24, 2020**. The required content of your notice to speak at the Fairness Hearing is outlined in the answer to Question 13.

If You Do Nothing

1. **What happens if I don't do anything?** If you are a Class Member, you will be included in the Proposed Settlement if it is approved. See Question 9 for more information.

More Information

1. **Where can I get more information?** The terms of the Proposed Settlement are only summarized in this notice. For the precise and full terms and conditions of the Proposed Settlement, please see the Settlement Terms and the proposed Amendment to the Joint Agreement posted on the Brown website at <https://www.brown.edu/cohen-settlement-notice>

and the websites of Public Justice <https://www.publicjustice.net/wp-content/uploads/2020/09/Brown-Settlement-Terms-and-Amendment-to-Joint-Agreement.pdf>; the ACLU of Rhode Island http://riaclu.org/documents/Brown_Settlement_Terms_and_Amendment_to_Joint_Agreement.pdf; and the law firm of Bailey Glasser <https://www.baileyglasser.com/assets/htmldocuments/Brown%20Settlement%20Terms%20and%20Amendment%20to%20Joint%20Agreement.pdf>.

1. **What happens after the Fairness Hearing?** If the Court approves the Proposed Settlement, all Class members will be bound by the provisions of the Proposed Settlement with respect to (1) claims against Defendants relating to any alleged non-compliance with the 1998 Joint Agreement arising out of Defendants' 2020 decision to restructure its athletic program by eliminating five women's teams from varsity status, and (2) the agreement that the 1998 Joint Agreement will end on August 31, 2024.

IF YOU DO NOT OPPOSE THIS PROPOSED SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING, APPEAR, OR FILE ANYTHING IN WRITING.

You have the right to consult with the attorneys for the Plaintiffs in this lawsuit and ask them any questions you may have. To do so or to obtain more detailed information about the proposed settlement, you can contact the attorneys for the Plaintiffs by telephone, email, or mail at any of the following addresses:

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Counsel for Plaintiffs

Cooperating Counsel,

Public Justice, P.C. and

American Civil Liberties Union

Foundation of Rhode Island

Please do not direct questions to the District Court or to counsel for Defendants.