

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

AMY COHEN, et. al,)
)
 Plaintiffs,)
)
 v.) C.A. No. 92-0197-T
)
 BROWN UNIVERSITY,)
 VARTAN GREGORIAN and)
 DAVID ROACH,)
)
 Defendants.)

JOINT AGREEMENT

This Agreement is made between Plaintiffs and Defendants, Brown University, and E. Gordon Gee (successor to defendant Vartan Gregorian) and David Roach, each in their official capacity (collectively referred to as "Brown").

WHEREAS this matter is currently before the Court subject to the Court of Appeals for the First Circuit's Order reversing the District Court judgment in part and remanding to this Court for the purpose of Brown submitting its plan for compliance; and

WHEREAS Brown submitted a Proposed Compliance Plan to which Plaintiffs objected; and

WHEREAS Brown has developed an Amended Proposed Compliance Plan, a copy of which is attached hereto as Exhibit A, which sets forth the criteria and methodology utilized by Brown in formulating its plan to achieve compliance and the specific steps Brown currently intends to implement to achieve compliance; and

WHEREAS plaintiffs have not agreed to or endorsed the criteria, methodology, or

steps set forth in the Amended Proposed Compliance Plan attached hereto, but do not object to Brown's implementation of that Plan to the extent that it is consistent with the terms of this Agreement; and

WHEREAS the parties recognize that having the Court consider Brown's Amended Proposed Compliance Plan may result in uncertainty with respect to the outcome of such consideration; and

WHEREAS the parties have reached this Agreement, which will, if approved by the Court, eliminate the uncertainty inherent in further formal proceedings; and

WHEREAS, in light of the fact that this matter has been certified as a class action, the parties believe it is appropriate and necessary that the Court approve of any agreement between the parties and provide notice to the class of such proposal;

NOW THEREFORE, in consideration of the mutual premises and covenants contained herein, it is agreed as follows:

I. GENERAL PROVISIONS

- A. This Agreement shall be binding on the parties hereto as well as their successors, as the case may be, only if approved by the Court as set forth herein, provided, however, that Brown shall implement the terms set forth herein during the pendency of the Court's consideration of the Joint Motion to Approve this Agreement.
- B. This Agreement shall be without prejudice to either party's position with respect to attorney's fees and costs in connection with this litigation.
- C. The parties shall jointly move to have the Court approve this Agreement and enter an appropriate Order.

- D. This Agreement resolves all issues remaining in this suit except for attorneys' fees and costs.
- E. This Agreement, if approved by the Court, is indefinite in duration as to those provisions concerning measurement of participation rates by applicable percentages (proportionality) and is not subject to revision or modification except as follows:
 - 1. By agreement of the parties, approved by the Court in accordance with the provisions of Rule 23, Fed.R.Civ.P.;
 - 2. After June 30, 2002, in the event of a determination by the Court, upon application for review by defendants or plaintiffs, that the United States Supreme Court, the First Circuit Court of Appeals, Congress, or the controlling regulatory agency has changed or clarified the law such that compliance with Title IX is not measured with reference to a comparison of the proportion of athletes of one gender and the undergraduate proportion of that gender, or that the proportion necessary to establish compliance with Title IX is significantly different (greater or lesser) than the percentage variances permitted by this Agreement.
- F. Those provisions of this Agreement requiring Brown to take, or refrain from taking, specific actions within the period of 1998-99 through June 30, 2002, shall not be affected by a change in the law as set forth above.
- G. Nothing in this Agreement shall prevent members of the plaintiff class participating on university-funded teams from challenging the adequacy of

Brown's treatment of women participants in its intercollegiate athletic program, even though on a program-wide basis, participation rates for men and women are within the applicable percentage of undergraduate enrollment of men and women for the subject academic year. Commencing July 1, 2001 (July 1, 2002 as to participants on women's gymnastics), nothing in this Agreement shall prevent members of the plaintiff class participating on donor-funded teams from challenging the adequacy of Brown's treatment of women participants in its intercollegiate athletic program, even though on a program-wide basis, participation rates for men and women are within the applicable percentage of undergraduate enrollment of men and women for the subject academic year.

- H. Nothing in this Agreement shall be construed as requiring or permitting any Brown coach, administrator, staff member, or student athlete to violate any provision of NCAA legislation, Ivy League rules or other applicable rules or regulations.

II. BROWN'S INTERCOLLEGIATE ATHLETIC PROGRAM.

- A. Brown's intercollegiate athletic program, as that term is used in this Agreement consists of teams which are "donor-funded" and teams which are "university-funded." Within those two terms, Brown offers teams for women, men, and co-ed teams. Except as specifically provided herein, nothing in this Agreement is intended, nor should it be construed, to alter or to require Brown to alter, the attributes of donor-funded and/or university-funded teams.
- B. University-funded teams for women. For the academic years 1998-99,

1999-2000 and 2000-2001, Brown will continue to offer the following university-funded teams for women:

1. basketball
2. crew (novice and varsity)
3. cross-country
4. field hockey
5. ice hockey
6. lacrosse
7. soccer
8. softball
9. squash
10. swimming and diving
11. tennis
12. track, including winter (indoor) and spring (outdoor) seasons
13. volleyball

C. University-funded teams for men. For the academic year 1998-99, Brown will

continue to offer the following university-funded teams for men:

1. basketball
2. baseball
3. crew (freshman and varsity)
4. cross-country
5. football
6. ice hockey
7. lacrosse
8. soccer
9. swimming and diving
10. tennis
11. track, including winter (indoor) and spring (outdoor) seasons
12. wrestling

D. Donor-funded teams for women. During the academic years 1998-99, 1999-

2000 and 2000-2001, Brown will offer the following donor-funded teams for women:

1. fencing
2. gymnastics
3. skiing
4. water polo

- E. During the academic year 2001-2002, Brown's intercollegiate athletic program will continue to include donor-funded women's gymnastics.
- F. Donor-funded teams for men. During the academic year 1998-99, Brown will continue to offer the following donor-funded teams for men:
 - 1. fencing
 - 2. squash
 - 3. water polo
- G. Donor-funded co-ed teams. During the academic years 1998-99, 1999-2000 and 2000-2001, Brown will continue to offer the following co-ed donor-funded teams (provided, however, that Brown may limit participation on these teams to women during the specified time if, in Brown's discretion, such limitation is advisable):
 - a. equestrian
 - b. golf

III. PERMITTED VARIANCE IN PARTICIPATION RATIOS (PROPORTIONALITY)

- A. During the academic years 1998-1999, 1999-2000 and 2000-2001:
 - 1. Brown shall provide participation opportunities in its intercollegiate program (university-funded and donor-funded) so that the percentage of each gender participating in the program is within 3.50% of each gender's percentage in the undergraduate enrollment for the same academic year. In the event that Brown adds any men's intercollegiate athletic team, except as provided in subparagraphs 2 and 3 below, for that year and for each year thereafter, the percentage of each gender participating in Brown's intercollegiate athletic

program shall be within 2.25% of each gender's percentage in the undergraduate enrollment for the same academic year.

2. Brown will not add any men's team at the university-funded level or change the status of any men's team to the university-funded status unless the following conditions are met:
 - a. If Brown adds a men's team, or changes the status of a men's team to university-funded, Brown will at the same time, add (or change the status of) one or more women's teams to the university-funded level so as to provide a number of actual women participants on the newly established women's university-funded team(s) so that the ratio of women participants to men participants at the university-funded level at the time of the change (based upon the previous year's participation) is not less than the ratio of women participants to men participants at the university-funded level before the changes. Satisfaction of this requirement may not be accomplished by increasing the number of women participating on university-funded teams for women existing before the addition/change.
 - b. If the classification of men's skiing, fencing or water polo is changed to university-funded status, the corresponding women's team will also be changed to university-funded status.
3. Brown will not add men's teams at the donor-funded level, except that

Brown may, in its sole discretion, add a donor-funded team for men's skiing.

- B. Through and including the end of academic year 2000-2001, Brown shall continue to recruit and otherwise use its best efforts to encourage participation of women on the women's and co-ed varsity teams provided for in this Agreement, and shall take no action intended to reduce the size of any women's team nor the number of women participating on any co-ed team identified above.
- C. Unless the permitted variance in participation ratios is already 2.25%, commencing July 1, 2001, Brown shall continue to provide participation opportunities in its intercollegiate program (university-funded and donor-funded) so that the percentage of each gender participating in the program is within 3.50% of each gender's percentage in the undergraduate enrollment for the same academic year. If, however, any of the events listed in subparagraph 1 through 4 below takes place, then for that year and for each year thereafter, the percentage of each gender participating in Brown's intercollegiate athletic program shall be within 2.25% of each gender's percentage in the undergraduate enrollment for the same academic year:
 - 1. The elimination of intercollegiate athletic teams for women or of co-ed teams or the change of status of intercollegiate athletic teams for women or co-ed teams from the university-funded to the donor-funded level.
 - 2. The replacement or substitution of existing intercollegiate athletic

teams for women or co-ed teams at the university- or donor-funded level.

3. The creation of intercollegiate athletic teams for men at the university- or donor-funded level.
4. The change of intercollegiate athletic teams for men from the donor-funded to the university-funded level.

D. Commencing July 1, 2001, the following circumstances shall not trigger the 2.25% variance (proportionality):

1. The addition or creation of additional intercollegiate athletic varsity or junior varsity teams for women at the university- or donor-funded level.
2. The reclassification of men's skiing, fencing or water polo to university-funded status, provided that the corresponding women's team will also be changed to university-funded status.
3. The creation of a men's skiing team at the donor-funded level.

E. In the event that, through no fault of Brown, intercollegiate competition is not available for any women's team whose continued existence is necessary to retain the 3.50% permitted percentage variance, then Brown may apply to the Court for leave to institute a new women's team in place of and at the same level as such team or to change the status of a women's team from donor-funded to university-funded status and, subject to the Court's determination, thereby seek to retain the permissible 3.50% variance.

F. Determination of participation ratios.

1. In determining the percentage of women and men participating in the overall intercollegiate athletic program, women and men student-athletes who participate on more than one intercollegiate athletic team will be counted separately for each team on which they participate, except that, for the purposes of counting under this Agreement (it being understood that Indoor and Outdoor Track are two separate team for NCAA, Ivy League and other purposes, and Brown will continue to report them as such), Indoor and Outdoor Track shall be counted as a single sport.
2. An individual shall be considered to be an intercollegiate varsity athletic participant if his or her name is included as an eligible athlete on the squad list on the first day of competition of the subject academic year.
3. An individual shall be considered to be a intercollegiate varsity athletic participant if his or her name is included on the squad list as an active (or injured) participant on the last day of regular season competition of the subject academic year.
4. The percentage of women and men participating in the overall intercollegiate athletic program shall be determined based upon the average number of men and women derived in accordance with the two preceding paragraphs, that is, if there were 420 women on all teams as of the first day of their respective competitions and 410 women on the last day of competition of the respective teams, then

the number of female athletes for purposes of the determination of relative percentage of male and female student athletes would be 415.

- G. Nothing herein shall prevent or restrict Brown from adding or creating additional varsity or junior varsity teams for women at the university- or donor-funded level, or eliminating varsity or junior varsity teams for men or changing the status of varsity teams for men from the university-funded to the donor-funded level.
- H. Brown, in order to achieve compliance with the above, may, but is not required to, impose minimum numbers of participants for varsity teams. In addition, Brown retains the right to impose maximums on men's teams and/or eliminate any men's teams.

VI. FUNDING AND TREATMENT OF CERTAIN DONOR-FUNDED TEAMS

- A. For the academic years 1998-99, 1999-2000 and 2000-2001 (and 2001-2002 for women's gymnastics) the following donor-funded teams shall have not less than the following budget allocations, with funding assurances as indicated in paragraph B below:

1. fencing (administered jointly for men and women): \$25,000
2. women's gymnastics: \$64,400
3. women's skiing: \$23,079 (provided that this budget allocation shall not be utilized to relieve the budget obligations of men's club ski team presently provided for compensation of a coach jointly assigned to men's and women's skiing)

4. women's water polo: \$25,000
- B. Funding shall be assured by Brown for the teams and years specified above, up to and including any deficit which remains at the end of the year for each such team (but in no event beyond the budgeted amount), through any source Brown chooses, including donations solicited through or made through the Brown University Sports Foundation, according to the following schedule:
- 100% during the year 1998-99;
 - 95% during the year 1999-2000; and
 - 90% during the year 2000-2001.
 - 90% during the year 2001-2002 as to women's gymnastics only
- C. Notwithstanding the levels of funding assurance set forth herein, in the event that all other donor-funded teams receive a higher percentage of their budget for the applicable year than as stated above, each of the said teams shall also receive that higher percentage in that year.
- D. Nothing contained herein shall be construed as relieving any student or employee of any obligation or responsibility under Brown's policies or procedure. Women's teams will cooperate in good faith in efforts for fundraising, but lack of success will not be the basis for elimination or reclassification of such team, nor shall the same relieve Brown of its financial obligations under this Agreement during the years specified in paragraph A above.
- E. All women's donor-funded teams shall be subject to the same responsibilities

and obligations and accorded the same benefits and treatment as other donor-funded teams, except that during the years 1998-1999, 1999-2000 and 2000-2001 and 2001-2002, women's gymnastics will receive the same benefits and treatment (other than financial provisions otherwise provided herein) as the team received in 1997-1998.

V. REPORTING AND ENFORCEMENT

- A. Annual Report. Unless and until relieved of this obligation by the Court upon motion, no later than August 1 of each year, Brown shall prepare and serve upon Plaintiffs' counsel an annual report with regard to its compliance with this Agreement for the academic year just being completed. The report need not be filed with the Court in the absence of a dispute. If Plaintiffs' counsel has any comment, objection or request for consideration with regard to the report, Plaintiffs' counsel shall provide Defendants' counsel with a written statement specifically setting forth such comment, objection or request for consideration within 30 days. Within 20 days thereafter, Defendants' counsel shall respond to Plaintiffs' counsel's comment, objection or request for consideration. If any differences are not resolved or settled within 15 days of Plaintiffs' receipt of Defendants' response, either party may seek review by or relief from the Court, provided, however that neither party may seek such review or relief without the parties first having met and conferred in an effort to resolve their differences. Thereafter, either party may request expedited hearings.
- B. The report shall provide the following:

1. For the years 1998-99, 1999-2000, and 2000-2001, year-end budget and expenditure reports (university and all gift accounts, if any) showing total amounts budgeted and expended by line item for the women's skiing, women's water polo, women's fencing and women's gymnastics teams.
2. For the year 2001-2002, year-end budget and expenditure reports (university and all gift accounts, if any) showing total amounts budgeted and expended by line item for the women's gymnastics team.
3. Copies of official Brown team rosters (squad lists) used to determine varsity eligibility under Brown, NCAA, Ivy and/or other intercollegiate conference eligibility requirements, which copies identify with specificity the individuals included as participants on the team as of the first competition and as of the last competition of the regular competitive schedule, as well as the dates of the first competition and last competition.
4. The last available NCAA sports sponsorship form completed by Brown.
5. A list identifying all intercollegiate athletic teams added or discontinued during the preceding academic year and identifying all intercollegiate athletic teams whose status has been changed from donor-funded to university-funded or from university-funded to donor-funded, and any teams which Brown plans to change in status for the

following year.

6. The number of male and female full-time undergraduate students enrolled at Brown in the preceding year.

C. In the event that Brown fails to meet the applicable permitted variance in percentage ratios as set forth in this Agreement:

1. Brown shall notify counsel for the Plaintiff class no later than August 1 following the conclusion of the academic year of the failure.
2. Brown shall provide counsel for the Plaintiff class with its explanation, if any, for the failure to achieve the applicable percentage.
3. Brown shall provide counsel for the Plaintiff class with its proposal, including details concerning any mechanism for enforcement of requirements, as to how and by what date Brown proposes to remedy this failure.
4. The parties shall confer and attempt to achieve agreement as to the appropriate remedy within 30 days thereafter.
5. If the parties are able to agree, the terms of their agreement shall be reduced to writing and implemented, but their agreement need not be filed with the Court.
6. If the parties are unable to agree, the matter shall be presented to the Court for determination of the manner in which Brown shall thereafter come into compliance with the then applicable percentage variance.

D. Additional information. Brown will provide additional information reasonably requested by Plaintiffs' counsel regarding compliance with this Agreement.

- E. Notwithstanding the foregoing, Plaintiffs may, in the case of an alleged gross violation of this Agreement, seek relief from the Court, provided that they have first notified Defendants of the alleged gross violation and spent a reasonable period of time meeting and conferring with Defendants in an attempt to resolve the issue.
- F. Enforcement. This terms of this Agreement shall be subject to the full enforcement powers of the Court by appropriate order. The Court shall retain jurisdiction concerning interpretation, enforcement and compliance with this Agreement.
- VI. Retaliation Prohibited. Brown agrees that there shall be no retaliation against any person for lawfully opposing practices believed to violate Title IX, for lawfully providing information, assistance or encouragement to plaintiffs or their counsel in connection with this lawsuit, or hereafter in lawfully assisting in efforts to enforce, determine or ensure compliance with the terms of this Agreement.
- VII. Class Notice. In accordance with Federal Rule of Civil Procedure 23(e), the parties will jointly move the Court to enter an order: (a) tentatively approving this Agreement and (b) providing for individual and publication notice to the class, the filing of objections, if any, to the Agreement, and the scheduling of a hearing to consider final approval of the Agreement. The parties will cooperate in identifying the members of the class and drafting the language of the class notice. Defendants will provide the notice to the class members in a form agreeable to Plaintiffs' counsel.

Lynette Labinger

RONEY & LABINGER
344 Wickenden Street
Providence, RI 02903
Telephone: (401) 421-9794
Telecopier: (401) 421-0132

Beverly E. Ledbetter, Esq.
Brown University
103 University Hall
Providence, RI 02912
Telephone: (401) 863-3122

Arthur H. Bryant, Esq.
Executive Director
Trial Lawyers for Public Justice
1717 Massachusetts Ave., N.W., #800
Washington, D.C. 20036
Telephone: (202) 797-8600
Telecopier: (202) 232-7203

Amato A. DeLuca
DeLuca & Weizenbaum
36 Exchange Terrace
Providence, RI 02903
Telephone: (401) 456-1500

ATTORNEYS FOR PLAINTIFFS

Approved:

Ernest Torres, U.S.D.J.

Julius C. Michaelson
Jeffrey S. Michaelson
Michaelson, Michaelson & Zurier
321 South Main Street
Providence, RI 02903
Telephone: (401) 277-9300
Attorneys for Defendants

ATTORNEYS FOR DEFENDANTS

Date: _____

