

January 22, 2020

**NOTICE OF PROPOSED CLASS-ACTION SETTLEMENT
AND HEARING IN TITLE IX ATHLETIC LITIGATION**

To: All female students and prospective students who enrolled at, applied for admission to, or were deterred from applying for admission due to Eastern Michigan University's alleged sex discrimination in allocation of athletic participation opportunities or the allocation of athletic financial assistance and benefits provided to varsity athletes to, Eastern Michigan University since June 15, 2015, as well as future female students and prospective students.

**PLEASE READ THIS NOTICE CAREFULLY AS IT CONCERNS
A LAWSUIT THAT MAY AFFECT YOUR RIGHTS.**

This notice is an official communication approved by a United States District Court. This notice is about the proposed settlement of a lawsuit that may affect your legal rights. This notice includes information about the proposed settlement, a Fairness Hearing scheduled by the Court, and the process for being heard by the Court.

I. Introduction.

This notice is to inform you about a proposed Consent Decree or settlement in a Title IX class action lawsuit brought by two female athletes against Eastern Michigan University ("EMU" or the "University"). The lawsuit is pending in the United States District Court for the Eastern District of Michigan and is captioned *Mayerova & Chretien v. Eastern Michigan University, et al.*, Case No. 18-cv-11909-GCS-RSW (E.D. Mich.).

The named Plaintiffs in the litigation are current EMU female student athletes who filed the case on behalf of a class (hereinafter "Plaintiff Class") of all female students and prospective students who enrolled at, applied for admission to, or were deterred from applying for admission due to the University's alleged sex discrimination in allocation of athletic participation opportunities or the allocation of athletic financial assistance and benefits provided to varsity athletes to, EMU since June 15, 2015, as well as future female students and prospective students.

YOU MAY BE A MEMBER OF THE PLAINTIFF CLASS IN THIS LITIGATION.

The named plaintiffs and the University have reached a settlement in the litigation. The terms of this settlement are contained in a proposed Consent Decree and the Court has granted

preliminary approval of that Consent Decree. After notice is provided and a hearing is held, the Consent Decree must be approved by the Court before it can go into effect.

The entire Consent Decree, detailing all terms of the settlement, may be downloaded at www.newkirklaw.com or <https://www.emich.edu/documents/consent-decree.pdf>

You can also obtain a copy by any of the follow methods:

- Visiting the Clerk of Court's office of the U.S. District Court for the Eastern District of Michigan, 231 W. Lafayette Blvd, Detroit, MI, or
- Contacting Jill Zwagerman (jzwagerman@newkirklaw.com); Beatriz Mate-Kodjo (bmatekodjo@newkirklaw.com) or Lori Bullock (lbullock@newkirklaw.com)

**YOU HAVE THE RIGHT TO BE HEARD AT COURT BEFORE THE FINAL
CONSENT DECREE IS APPROVED.**

The Court has scheduled a Fairness Hearing for March 12, 2020 at 1 p.m. (EST) in courtroom 206. The Honorable Judge George Caram Steeh will preside over the hearing which will be held at the U.S. District Court for the Eastern District of Michigan, 231 W. Lafayette Blvd, Detroit, MI. The judge will be determining whether the proposed Consent Decree is fair, reasonable, and adequate, and should be approved.

**THIS NOTICE WILL SUMMARIZE THE PROPOSED CONSENT DECREE AND
ADVISE YOU ABOUT:**

1. The history of the litigation between the named plaintiffs and the University.
2. A summary of the reasons for settling the Litigation rather than proceeding to trial.
3. A summary of the terms of the proposed Consent Decree.
4. Information regarding your opportunity to file objections with the Court about the Consent Decree.
5. Information regarding your opportunity to appear at the Fairness Hearing on March 12, 2020.
6. The binding nature of the Consent Decree on all members of the Plaintiff Class.

II. History of the Litigation

The Plaintiff Class in this litigation has alleged that EMU violated Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88 ("Title IX") by failing to allocate an equitable number of varsity athletic participation opportunities to female students; failing to allocate an equitable amount of athletic financial aid to female students; and failing to allocate varsity athletic benefits

in an equitable manner. The named Plaintiffs asserted these claims on behalf of the Plaintiff Class. EMU denied Plaintiffs claims and believes that it has at all times complied with Title IX. The settlement would resolve all of these claims.

On June 15, 2018, the Plaintiffs filed their complaint. On the same date, Plaintiffs filed a motion for a temporary restraining order and a preliminary injunction asking the Court to prevent the elimination of the women's varsity softball and tennis teams. On September 6, 2018, the Plaintiffs filed an amended complaint. On September 27, 2018, the Court granted the Plaintiffs' request for a preliminary injunction. Over the next four months the Plaintiffs and EMU worked together to find a mutually agreeable way to implement the Court's preliminary injunction. During those negotiations, EMU agreed to reinstate the women's varsity tennis team. On February 12, 2019, after the parties were unable to reach a resolution on implementing the injunction, the Court issued an order granting injunctive relief, which mandated the reinstatement of the women's varsity softball team. EMU timely appealed both the September 28, 2018 and February 12, 2019 Court rulings to the United States Court of Appeals for the Sixth Circuit. On March 28, 2019, the United States Court of Appeals for the Sixth Circuit issued an order staying the injunction pending appeal.

On January 16, 2020, the Court certified this lawsuit as a class action, defining the Plaintiff Class as:

All female students and prospective students who enrolled at, applied for admission to, or were deterred from applying for admission due to the University's alleged sex discrimination in allocation of athletic participation opportunities or the allocation of athletic financial assistance and benefits provided to varsity athletes to, EMU since June 15, 2015, as well as future female students and prospective students.

The Court appointed Marie Mayerova and Ariana Chretien as representatives of the Plaintiff Class. The Court appointed Jill Zwagerman, Beatriz Mate-Kodjo, and Lori Bullock of Newkirk Zwagerman, P.L.C. as the attorneys for the Plaintiff Class.

The Court has not yet conducted a trial on any claims asserted in the amended complaint. Further, upon successful entry of the final Consent Decree, no trial will occur on these claims and EMU's appeal will be dismissed.

III. Reasons for the Settlement

This case has been extensively litigated by both parties. The Court did not decide whether the Plaintiffs or EMU are correct. Instead, both sides agreed to settle this case to avoid the cost, time, and uncertainty of further litigation. The Court has granted preliminary approval of the proposed Consent Decree. The settlement does not mean that EMU agrees that any law was broken or that EMU believes it did anything wrong. The class representatives and their attorneys think the settlement is best for the Plaintiff Class.

Counsel for EMU and the Plaintiffs have engaged in extensive, arms-length negotiations, which were mediated by a mediator from the United States Court of Appeals for the Sixth Circuit. Counsel for EMU and the Plaintiffs also engaged in negotiations before working with the mediator. EMU and the Plaintiffs have been in ongoing settlement negotiations since October 16, 2018. The negotiations culminated in the proposed Consent Decree. The attorneys for the Plaintiff Class believe the terms and conditions of the settlement are fair, reasonable, and in the best interests of the class. In reaching this conclusion, the attorneys for the Plaintiff Class have analyzed the benefits of the Consent Decree, the possible outcomes of further litigation, and the expense and length of continued proceedings necessary to prosecute the claims through appeals and trial.

Both sides agree that it would be preferable to devote EMU's resources to improving the athletic department rather than to expend those resources on litigation. EMU is committed to Title IX compliance and the Consent Decree will assist it in accomplishing that goal.

IV. Summary of the Proposed Consent Decree

This section will provide you with a summary of some of the provisions of the proposed Consent Decree. This is not all of the terms. You should read the entire Consent Decree to ensure that it protects your rights and interests.

1. General Terms

- a. EMU agrees to take all necessary and reasonable steps to achieve sustainable “Substantial Proportionality” between the ratio of male to female athletic participation opportunities in its varsity sports programs in comparison to the ratio of male to female full-time undergraduate students attending the University by the end of the 2022-23 academic year. This means that that the percentage of athletic participation opportunities for a particular gender shall be equal to or within 1.8 percentage points-plus or minus-of the percentage of that same gender in the full-time undergraduate student body. For example, if the overall undergraduate population is 56% female and 44% male, then Substantial Proportionality will be reached so long as the percentage of female student-athletes is between 54.2% and 57.8% female.
- b. EMU agrees that during the term of the Consent Decree it will not eliminate any women’s programs unless either (a) the elimination is the result of circumstances beyond its control, as demonstrated to and approved by the Court or (b) the elimination will not cause participation of women to fall below the level of Substantial Proportionality. The Consent Decree neither requires nor prohibits the elimination any men’s varsity team.
- c. The Consent Decree will remain in effect through the 2022-2023 academic year or until the University reaches Substantial Proportionality as defined above and EMU has allocated the additional funds to women’s sports as described in paragraph 3(d) below.
- d. The Court will appoint a neutral third-party individual to serve as a Referee. This person will be responsible for monitoring EMU’s compliance over the term of the Consent Decree.

2. Tennis

- a. EMU agrees to continue to sponsoring women’s varsity tennis. EMU will allocate funds for recruiting to make it possible to have a full team ready to compete in the Spring 2020 tennis season.

- b. EMU will authorize the head coach of the women's tennis team to award athletic financial assistance to the maximum allowed by the NCAA, which is currently equal to the equivalent of 8 full scholarships for women's tennis athletes.
- c. EMU will provide appropriate practice and competition facilities for the women's tennis team.

3. Expanding Opportunities

- a. EMU recognizes the importance of adding athletic participation opportunities for female student-athletes.
- b. EMU will create a women's varsity lacrosse team that will begin competition by Spring 2022. To facilitate the creation of these athletic opportunities EMU will:
 - i. Hire a head coach no later than Spring 2020;
 - ii. Hire an assistant coach during the 2020-2021 academic year;
 - iii. Hire a second assistant coach by Fall 2021;
 - iv. Allocate funds for recruitment, development of facilities, and obtaining necessary equipment.
- c. EMU will authorize the lacrosse head coach to award athletic financial assistance to the maximum allowed by the NCAA, which is currently equal to the equivalent of 12 full scholarships for women's lacrosse athletes.
- d. In addition to the amount budgeted to begin the new lacrosse program, the University commits that between the 2019-20 academic year through the 2022-23 academic year it will spend an additional \$2,000,000 in capital and operational spending over what had previously been budgeted on women's sports. The \$2,000,000 amount represents the accumulated total operating budget and capital spending over the four years, and not an annual increment to spending.
- e. EMU agrees to take steps to manage the roster sizes of men's and women's sports as are necessary to achieve Substantial Proportionality. Prior to finalizing any roster management guidelines, the University will consult with the Referee to obtain his/her input and approval.

4. Payment of Attorney Fees and Expenses

- a. EMU will pay class counsel an amount to be determined by agreement of the parties or by the Court.

5. Payment to Named Plaintiffs

- a. EMU will pay \$125,000 collectively to the named plaintiffs for their individual claims.

V. Your Opportunity to Object and/or Appear at the Fairness Hearing

AS A CLASS MEMBER, YOU HAVE THREE OPTIONS:

(1) if you are satisfied with the settlement, you do not have to do anything, but you will be bound by the terms and conditions of the Consent Decree if the Court approves it;

(2) if you are satisfied with the settlement and wish to submit comments in favor of it, you may do so; or

(3) if you object to the settlement or any provisions in it, you may submit written objections or appear at the Fairness Hearing on March 12, 2020 at 1 p.m. (EST) in courtroom 206.

If you wish to comment on or file objections to the Consent Decree, then you (or an attorney on your behalf) must submit your comments or objections in writing to:

Clerk's Office
Theodore Levin U.S. Courthouse
231 W. Lafayette Blvd., Room 599
Detroit, MI 48226

With copies sent to:

Lori Bullock
Newkirk Zwagerman, PLC
521 E. Locust Street, Suite 300
Des Moines, Iowa 50309
(515) 883-2000
lbullock@newkirklaw.com

Brian Schwartz
Miller, Canfield, Paddock & Stone, PLC
150 West Jefferson, Suite 2500
Detroit, Michigan 48226
(313) 963-6420
schwartzb@millercanfield.com

ALL COMMENTS AND OBJECTIONS MUST BE IN WRITING AND MUST BE RECEIVED BY THE CLERK'S OFFICE ON OR BEFORE MARCH 11, 2020.

All objections must state the name and docket number of the Litigation, *Mayerova & Chretien v. Eastern Michigan University, et al.*, Case No. 18-cv-11909-GCS-RSW (E.D. Mich.). All objections should include your full name, your address, your signature, the reasons why you object to the settlement, and all documents you want the Court to consider. Objections filed by

attorneys should be filed pursuant to the Electronic Case Filing Procedures for the Eastern District of Michigan, which are available online at https://www.mied.uscourts.gov/PDFFiles/policies_procedures.pdf. If you send an objection, you do not have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it.

If you choose to appear at the Fairness Hearing, you may do so either in person or through an attorney at your own expense. If you wish to appear and be heard at the Fairness Hearing in person or through your own attorney, you or your attorney must notify (1) The Clerk of Court's Office, Theodore Levin U.S. Courthouse 231 W. Lafayette Blvd., Room 599 Detroit, MI 48226; and (2) the lawyers named above, in writing, by March 11, 2020. Requests by attorneys should be filed pursuant to the Electronic Case Filing Procedures for the Eastern District of Michigan, which are available online at https://www.mied.uscourts.gov/PDFFiles/policies_procedures.pdf. The hearing may be moved to a different date or time without notice, so if you plan to attend, you should call or email Class Counsel for current information. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may listen to people who have asked to speak about an objection. At or after the hearing, the Court will decide whether to approve the settlement. If there are no objections from any Class Member to the proposed settlement, the Court will adjourn the hearing and enter its Order of Approval without a Fairness Hearing and the final Consent Decree.

VI. Binding Effect and Releases

The proposed Consent Decree, if finally approved by the Court, will bind all members of the class. As a result, any person who is a member of the Plaintiff Class will be barred from seeking relief for claims relating to EMU's provision of athletic opportunities for its female students, provision of athletic financial aid for its female students, or provision of varsity athletic benefits for its female students during the term of the Consent Decree.

VII. No Opt-Outs

You may not "opt out" of the provisions of the Consent Decree. You may, however, voice objections to the Consent Decree as discussed above.

VIII. Additional Information

Unless otherwise ordered by the Court, any class members who do not make known their objections or opposition to the Consent Decree in the manner described above shall be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the Consent Decree and any other matters pertaining to the claims asserted in the Litigation.

This Notice is a summary and does not describe all of the details of the proposed Consent Decree. Copies of this notice and of the proposed Consent Decree are available at www.newkirklaw.com and <https://www.emich.edu/documents/consent-decree.pdf>. All other papers filed in the Litigation, are available for inspection in the office of the Clerk of Court's office of the U.S. District Court for the Eastern District of Michigan, 231 W. Lafayette Blvd, Detroit, MI. If you have additional questions, you may contact class counsel Jill Zwagerman (515-883-2000; jzwagerman@newkirklaw.com), Beatriz Mate-Kodjo (515-883-2000; bmate-kodjo@newkirklaw.com), or Lori Bullock (515-883-2000; lbullock@newkirklaw.com).

**PLEASE DO NOT CONTACT THE JUDGE DIRECTLY ABOUT THE SETTLEMENT,
THE PROPOSED CONSENT DECREE, OR THIS NOTICE.**