

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

Ximena Miranda, et al. v. Xavier University, Case No. 1:20-CV-539

This is a notice from Xavier University (“Xavier”) that a lawsuit has been filed relating to its decision to switch in-person curriculum to online curriculum in response to the COVID-19 pandemic, and that a class action settlement may affect your rights.

A federal court authorized this Notice.

- A settlement has been reached in a class action lawsuit against Xavier University (“Xavier” or “Defendant”) relating to Xavier’s decision in the Spring and Summer of 2020 to switch classes intended to be instructed in-person to entirely online coursework in response to the COVID-19 pandemic.
- If your name is included on the Xavier Class List, you were enrolled as a student in Xavier University’s College of Nursing Accelerated Bachelor of Science in Nursing Program in any city in Ohio in the Spring and Summer of 2020, and you paid tuition and fees, you may be entitled to benefits pursuant to the class action Settlement Agreement (“Settlement Agreement”).
- Your legal rights are affected regardless of whether you do or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will receive a Settlement Payment based on a pro rata distribution of the Settlement Fund. You do not need to submit a claim. If you do nothing and receive a Settlement Payment, you will be bound by the terms of the Settlement.
REQUEST TO BE EXCLUDED FROM THE SETTLEMENT BY SEPTEMBER 4, 2023	If you exclude yourself, you will get no payment or benefits from the Settlement. This option allows you to keep your right to independently sue the Defendant for claims related to this case. If you opt out, you will not be bound by the terms of the Settlement.
OBJECT TO THE SETTLEMENT BY SEPTEMBER 4, 2023	Write to the Court with reasons why you do not agree with the Settlement. The Court cannot order a different settlement. You can also ask to speak to the Court at the Final Approval Hearing on October 3, 2023 about the fairness of the Settlement, with or without your own attorney.

Questions? Visit www.xavierabsnsettlement.com or call toll-free 1-833-616-1292

**GO TO THE FINAL
APPROVAL HEARING
ON OCTOBER 3,
2023**

You may ask the Court for permission for you or your attorney to speak about your objection at the Final Approval Hearing.

- These rights and options—and the deadlines to exercise them—are explained in this Notice. For complete details, view the Settlement Agreement, available at www.xavierabsnsettlement.com.
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will only be made after the Court grants final approval of the Settlement and after any potential appeals are resolved.

BASIC INFORMATION

1. Why is this Notice being provided?

The Court directed that this Notice be provided because you have a right to know about a proposed Settlement that has been reached in this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after objections or appeals, if any, are resolved, the Settlement Administrator appointed by the Court will distribute the payments permitted under the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what payments are available, who is eligible for them, and how to receive them.

The Court in charge of this case is Judge Timothy S. Black, United State District Judge, Southern District of Ohio. The case is known as *Ximena Miranda, et al. v. Xavier University*, Case No. 1:20-CV-539. The person who filed the Lawsuit is called the plaintiff and the entity she sued, Xavier University, is called the Defendant.

2. What is this lawsuit about?

This class action arises out of Xavier University's response to the COVID-19 pandemic. In the Spring and Summer of 2020, Xavier University moved all of its in-person instructed classes in the College of Nursing's Accelerated Bachelor of Science in Nursing Program to online instruction in an effort to mitigate the spread of COVID-19. Plaintiff Ximena Miranda filed suit, alleging that this failure to provide in-person clinical education was unlawful causing her harm in the form of diminishing the value of her education and failing to provide her the in-person instruction that she paid for.

Xavier denies each and all of the claims and contentions alleged against it in the Litigation. Xavier denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation.

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3. What is a class action?

In a class action, one or more people called the plaintiff(s) or class representative(s) sue on behalf of people who have similar claims. Together, all these people are called a class or class members. One court and one judge resolves the issues for all class members.

4. Why is there a Settlement?

The Court did not decide in favor of the Plaintiff or Defendant. Instead, the Plaintiff negotiated a settlement with Defendant that allows both the Plaintiff and Defendant to avoid the risks and costs of lengthy and uncertain litigation and the uncertainty of a trial and appeals. It also allows Class Members to obtain payment without further delay. The Plaintiff and her attorneys think the Settlement is best for all Class Members. This Settlement does not mean that Defendant did anything wrong.

WHO IS INCLUDED IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

The Class includes all persons identified on the Xavier Class List who were enrolled as a student in Xavier University's College of Nursing Accelerated Bachelor of Science in Nursing Program in any city in Ohio who paid tuition and fees to Xavier during the Spring 2020 and Summer 2020.

6. Are there exceptions to being included in the Class?

Yes. The Class specifically excludes: (1) the judge and court personnel overseeing this Litigation; (2) the Defendant, its subsidiaries, successors, predecessors, and any entity in which the Defendant has a controlling interest and its current or former officers, directors, and employees; and (3) Class Members who submit a valid Request for Exclusion on or before the Opt-Out Deadline.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

Xavier shall fund a Settlement Fund in the amount of \$750,000 to pay for the costs for notice and claims administration, attorneys' fees and costs, service award and Class Member payments (described below).

- Class Members will receive Settlement Payments from the Settlement Fund based on a pro rata distribution of the Settlement Fund after payment of any Fee Award and Expenses, Notice and Administration Expenses, and a Service Award. Class Members who receive a Settlement Payment will receive payment based on whether they were enrolled in the Spring 2020 classes, the Summer 2020 classes, or both Spring and Summer 2020 classes.

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- If it is economically feasible, the Settlement Administrator will conduct a second round of distribution of Settlement Payments to Class Members if a sufficient number fail to deposit the payments received during the first round of distribution.
- Upon expiration of any checks that have been mailed to Class Members but have not been cashed, 100% of the remaining unclaimed funds after the final round of pro rata distribution will be donated, subject to Court approval, to TriHealth/Good Samaritan School of Nursing subject to Court approval.

8. Who can receive a Settlement Payment?

All Class Members will receive a Settlement Payment unless they opt-out of the Settlement or are otherwise excluded from the Settlement.

9. How do I get a Settlement Payment?

To receive a Settlement Payment, you do not need to do anything. The payments will be dispersed via check to all Class Members who are eligible to receive benefits under the Settlement who do not choose to opt-out of class treatment under the Settlement.

10. When will I get my Settlement Payment?

The Court will hold a Final Approval Hearing at **11:00 A.M.** on **OCTOBER 3, 2023** to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether any appeals can be resolved favorably and resolving them can take time. Please be patient.

11. What am I giving up as part of the Settlement?

If the Settlement becomes final, you will give up your right to sue Xavier University for the claims being resolved by this Settlement. The specific claims you are giving up against Xavier are described in the Settlement Agreement. You will be “releasing” Xavier and all related people or entities as described in Settlement Agreement, available at www.xavierabsnsettlement.com.

The Settlement Agreement describes the Released Claims with specific descriptions, so please read it carefully. If you have any questions about what this means you may talk to the attorneys listed in Question 12 for free or you may, of course, talk to your own lawyer at your own expense.

If you want to opt out or be excluded from the Settlement, you must take certain steps to do so. See the *Excluding Yourself from the Settlement* section below for more information.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

Yes. The Court appointed the following attorneys to represent you and other Class Members: Terence R. Coates, Dylan J. Gould, Justin. C. Walker, and W.B. Markovits of Markovits, Stock & DeMarco, LLC; and Joseph M. Lyon of The Lyon Firm

These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will Class Counsel be paid?

Class Counsel will seek a combined award of attorneys' fees and expenses in an amount not to exceed 33.33% (or \$250,000) and reimbursement of litigation expenses not to exceed \$13,000 from the Settlement Fund. Class Counsel may make an application for an order from the Court awarding \$5,000 as a Service Award to Plaintiff Ximena Miranda.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep the right to sue Xavier about issues in the Litigation, then you must take steps to opt out of the Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Class.

14. If I exclude myself can I still get payment from the Settlement?

No. If you exclude yourself from the Settlement, you will not be entitled to any benefits of the Settlement, but you will not be bound by any judgment in this case.

15. If I do not exclude myself can I sue Xavier for the same thing later?

No. Unless you exclude yourself from the Settlement, you give up any right to sue Xavier for the claims that this Settlement resolves. You must exclude yourself from the Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case.

16. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to be excluded from the Settlement in *Ximena Miranda, et al. v. Xavier University*, Case No. 1:20 CV-539 (S.D. Ohio). Your letter must also include your name, address, and signature. You must mail your exclusion request postmarked no later than **September 4, 2023** to:

Miranda v. Xavier University
c/o Settlement Services, Inc.
PO Box 10269
Tallahassee, FL 32302-2269

OBJECTING TO THE SETTLEMENT

You may tell the Court that you do not agree with the Settlement or some part of it.

17. How do I tell the Court that I do not like the Settlement?

If you are a Class Member, you can object to the Settlement if you do not like it or a portion of it. You may give reasons why you think the Court should not approve the Settlement. The Court will consider your views before deciding whether to approve the Settlement.

Each Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. The objection must include:

- (i) the name of the proceedings;
- (ii) the Settlement Class Member's full name, current mailing address, email address, and telephone number;
- (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection;
- (iv) the identity of any attorneys representing the objector;
- (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing;
- (vi) a statement identifying all class action settlements objected to by the Settlement Class Member in the previous 5 years; and,
- (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

To be timely, written notice of an objection in the appropriate form must be filed with the Court or mailed to Class Counsel and Xavier University's Counsel no later than **SEPTEMBER 4, 2023**.

COURT	CLASS COUNSEL	DEFENDANT'S COUNSEL
ADDRESS	Terence R. Coates MARKOVITS, STOCK & DEMARCO, LLC 119 East Court Street, Suite 530 Cincinnati, OH 45202 tcoates@msdlegal.com	Aaron Herzig TAFT STETTINIUS & HOLLISTER LLP 425 Walnut Street, Suite 1800 Cincinnati, OH 45202-3957 aherzig@taftlaw.com

Questions? Visit www.xavierabsnsettlement.com or call toll-free 1-833-616-1292

THE COURT’ S FINAL APPROVAL HEARING

The Court will hold a final hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you are not required to attend or speak at the hearing.

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **11:00 A.M.** on **OCTOBER 3, 2023**, in the District Court for the Southern District of Ohio, and pursuant to consent of the parties, the Final Approval Hearing will be conducted virtually. Counsel of record and timely objectors (“Participants”) will receive video conference instructions at least seven (7) days before the Final Hearing via email. Participants are required to mute their microphones when not speaking.

Non-participants may join the hearing by calling: 1 (517) 317-3122; Access Code: 854-573-445. Non-participants are required to mute their telephones during all stages of the proceedings. Non-participants should call into the hearing shortly before 10:00 a.m., as the Court will lock the virtual hearing room once the Fairness Hearing is underway. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will take into consideration any properly filed written objections and may also listen to people who have asked to speak at the hearing (*see* Question 22). The Court will also decide whether to approve attorneys’ fees and expenses for Class Counsel, and the Service Award to the Class Representative.

19. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you file an objection, you do not have to come to Court to talk about it. You may also hire your own lawyer to attend, at your own expense, but you are not required to do so.

20. May I speak at the Final Approval Hearing?

Yes, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must follow the instructions provided in Question 17 above.

IF YOU DO NOTHING

21. What happens if I do nothing?

If you do nothing, you will receive a Settlement Payment as described in Question 7 above. You will also be bound by the Settlement Agreement, and therefore be bound by the “release” described above in Question 11.

GETTING MORE INFORMATION

22. Are more details about the Settlement available?

Yes. This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at www.xavierabsnsettlement.com.

23. How do I get more information?

Visit www.xavierabsnsettlement.com for more information or contact the Settlement Administrator by mail, email or phone:

Mail: Miranda v. Xavier University
c/o Settlement Services, Inc.
PO Box 10269
Tallahassee, FL 32302-2269

Email: claims@ssiclaims.com

Phone: **1-833-616-1292**

Please do not call the Court or the Clerk of the Court or Defendant for additional information.