

SETTLEMENT AGREEMENT

This settlement agreement (the "Agreement") is entered into as of December 7, 2006 (the "Effective Date") by and between ELIZABETH LAURA CHOIKE, ASHLEY GUINEVERE STONER, HEATHER WALBRIGHT, JESSICA STUDENT, JENNIFER VENET, ELIZABETH PENNING, LAURA A. SANFORD, EMILY C. CAMPBELL, REBECCA ZINN, ALISON NICOLE NUCKOLS, SARAH S. SANDER, and RACHEAL BIENIAS, individually and as representatives of the putative plaintiff class (collectively, "Plaintiffs") and SLIPPERY ROCK UNIVERSITY OF PENNSYLVANIA OF THE STATE SYSTEM OF HIGHER EDUCATION ("Defendant" or "SRU"). Plaintiffs and SRU (together, the "Parties") are parties to the litigation captioned, or otherwise referred to, as *Choike, et al. v. Slippery Rock University of Pennsylvania*, Civil Action No. 2:06-cv-00622-DWA, which is pending in the United States District Court for the Western District of Pennsylvania before the Honorable Donetta W. Ambrose, chief judge of the district court (the "Litigation").

RECITALS

WHEREAS, Plaintiffs filed a complaint (the "Complaint") in this Litigation on May 9, 2006, alleging that SRU violated, and was continuing to violate, Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88 ("Title IX") by: (1) as stated in count one of the Complaint, failing to provide equitable athletic opportunities for its female students, including through SRU's announced elimination of three women's varsity teams, field hockey, swimming, and water polo (which claims are referred to in this Agreement as the "Participation Claims"); and (2) as stated in count two of the Complaint, failing to provide equitable treatment to its female student athletes (which claims are referred to in this Agreement as the "Treatment Claims");

WHEREAS, on May 11, 2006, Plaintiffs filed a motion for preliminary injunction, together with supporting papers, seeking the immediate reinstatement of the women's field hockey, swimming, and water polo teams;

WHEREAS, in May 2006, SRU reinstated the women's field hockey team but did not reinstate the women's swimming or water polo teams;

WHEREAS, on June 14, 2006, the Court held a hearing on Plaintiffs' motion for preliminary injunction, after which the Parties submitted proposed findings of fact and conclusions of law;

WHEREAS, on July 21, 2006, the Court granted Plaintiffs' motion for a preliminary injunction and ordered SRU to reinstate the women's swimming and water polo teams and to provide the teams with commensurate funding, staffing, and other benefits;

WHEREAS, by order dated August 28, 2006, the Litigation was referred to Magistrate Judge Lisa P. Lenihan for Magistrate Judge Lenihan to supervise the Parties' settlement negotiations;

WHEREAS, Plaintiffs and SRU desire to resolve and settle the Participation Claims of the Litigation without the necessity of further litigation, including a trial on the merits, and without the accompanying expense and inconvenience of such further litigation;

WHEREAS, the Parties reached a settlement in principle on September 13, 2006, during a settlement conference held before Magistrate Judge Lenihan; and

WHEREAS the Parties desire to make formal and give substance to the settlement they reached in principle on September 13, 2006 and further, to fully and finally settle the Participation Claims in this Litigation.

TERMS OF SETTLEMENT

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Plaintiffs and Defendant, intending to be legally bound, agree as follows.

I. SPECIFIC PARTICIPATION-CLAIMS PROVISIONS:

A. **Reporting.** SRU will provide the following documentation to Plaintiffs' counsel on a quarterly basis:

1. all National Collegiate Athletic Association eligibility and clearance forms;
2. all squad lists;
3. all add/delete documentation;
4. all reports stating for student athletes their status and/or designation as far as competition, hardship, and redshirting (so-called "CHRP" reports);
5. all season competition reports;
6. a record of attendance at varsity team practices (counsel for the Parties will agree on the exact form of this record); and
7. a current spreadsheet of student athletes on roster.

No later than January 31, 2007, SRU shall make the first quarterly reporting for the period ending December 31, 2006. The reporting period shall continue for two years following the first academic year in which SRU achieves compliance with the proportionality requirement of Title IX within two percentage points.

B. **Resolution of Reporting Disputes.** If Plaintiffs have questions and/or concerns regarding the documentation provided by SRU pursuant to paragraph "A" of this Agreement, they shall contact Defendant's counsel. Both Parties shall make a good faith effort to resolve any disputes that may arise out of, or be related to, SRU's reporting obligations. If Plaintiffs' counsel believes they have good cause to seek an interview with SRU's athletic director, any assistant

athletic director, any coach, and/or any assistant coach regarding documentation provided by SRU, Plaintiffs' counsel shall serve Defendant's counsel with a written request, and Defendant shall produce the requested employee for interview. If, after reasonable effort, the Parties are unable to resolve a dispute, Plaintiffs' counsel may seek Court resolution; provided, however, that Plaintiffs will not seek a resolution from the Court before the end of the then-current academic year, except in extraordinary circumstances. If the Parties remain unable to reach an agreement, the Court shall, upon Plaintiffs' request, reopen the litigation for the purpose of deciding any unresolved issues.

C. Definition of Participant for Title IX Purposes and Roster-Size Policy.

Plaintiffs' counsel has provided Defendant's counsel with a proposed definition of the circumstances in which a student shall be considered a member of a varsity team for Title IX purposes and has provided comments to SRU's proposed roster-size policy. The Parties' counsel are engaged in good faith negotiations to agree on a definition and policy no later than December 31, 2006, and SRU shall adopt the agreed-upon definition and policy and communicate it to SRU's athletic director, all assistant directors, all coaches, and all assistant coaches. If the Parties' counsel are unable to reach an agreement as to above definition and/or as to SRU's roster-size policy, counsel may seek assistance from Magistrate Judge Lenihan.

D. The Additional Fund. If, by June 30 of the just-ended academic year, the participation of SRU female varsity athletes is not within two percentage points of the proportion of full-time female undergraduates, SRU will allocate to women's varsity athletics an additional amount of money (the "Additional Fund") the following academic year. The Additional Fund shall equal a percentage of SRU's annual athletic operating budget and shall equal the percentage by which SRU is noncompliant.

Thus, for example, if at the end of the academic year, 55 percent of SRU's full-time undergraduate student body is female, and only 50 percent of varsity athletic opportunities are filled

by women, the Additional Fund would equal five percent of the total annual athletic operating budget. The percentage of the Additional Fund shall not exceed 10 percent in any one academic year.

E. **Retention of Women's Swimming and Water Polo.** SRU shall retain women's swimming and water polo as varsity teams for one full academic year after SRU has achieved compliance with the proportionality requirement of Title IX within two percentage points. SRU shall accord the women's swimming and water polo teams funding, staffing, and all other benefits commensurate with the teams' status as varsity intercollegiate teams.

II. GENERAL PROVISIONS:

F. **Limited Effect of Agreement and Commitment to Resolve Remaining Issues.**

This Agreement resolves only the Participation Claims of the Litigation. All other issues, including without limitation the Treatment Claims and any award of attorneys' fees and costs, are not resolved by this Agreement. The Parties commit to continue discussions to resolve the remaining issues in the Litigation.

G. **Fairness, Reasonableness, and Adequacy.** The Parties agree and acknowledge that the settlement memorialized by this Agreement is fair, reasonable, and adequate and that a settlement of the Participation Claims is in the best interests of both Plaintiffs and SRU.

H. **Court Approval.** On or before December 8, 2006, the Parties shall file a joint motion (the "Joint Motion") and otherwise take all steps necessary to obtain the Court's preliminary approval of the settlement memorialized by this Agreement.

I. **Class Certification.** The Joint Motion shall submit to the Court for certification the following class, which the Parties had previously agreed to by stipulation filed September 26, 2006:

All present and future female students of Slippery Rock University ("Slippery Rock"), including currently enrolled female students, female students admitted for the 2006-07 academic year, and prospective female students who

participate, seek to participate, or have been deterred or prevented from participating in or obtaining the benefits of intercollegiate athletics sponsored by Slippery Rock.

J. **Class Notice.** Through the Joint Motion, the Parties shall move the Court to enter an order providing for notice to the class; the filing of objections, if any, to this Agreement; and the scheduling of a hearing to consider final approval of this Agreement. SRU shall bear any and all expenses in providing class notice.

K. **Attorneys' Fees and Costs.** SRU will not object to Plaintiffs' counsel seeking an award of interim fees from the Court -- provided, however, that SRU retains its right to contest the fee amount.

L. **Binding Effect.** This Agreement shall be binding on Plaintiffs and Defendant, as well as their successors, only if the Agreement is approved by the Court; provided, however, that SRU shall comply with the terms set forth in this Agreement, including without limitation the reporting requirements set forth in paragraph "A", during the pendency of the Court's consideration of the Joint Motion.

M. **Enforcement.** The terms of this Agreement shall be subject to the full enforcement powers of the Court. In the Joint Motion, the Parties shall request that Chief Judge Ambrose retain jurisdiction concerning the interpretation of and compliance with this Agreement, and the Court's retention of jurisdiction is a condition precedent to Plaintiffs' entering into this Agreement. If the Parties are unable to reach an agreement over any disputed issue, the Court shall, upon Plaintiffs' request, reopen the litigation for the purpose of deciding the unresolved issue.

N. **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict-of-law rules.

O. **Disclaimer of Liability.** By entering into this Agreement, Plaintiffs do not concede the validity of any of the defenses that Defendant has raised, and Defendant does not admit any liability to Plaintiffs.

P. **Dismissal with Prejudice.** After final Court approval of the settlement contemplated by this Agreement, the Parties shall move the Court for an order dismissing count one of the Complaint with prejudice. Such dismissal shall not affect Chief Judge Ambrose's retention of jurisdiction concerning the interpretation of and compliance with this Agreement.

Q. **Retaliation Prohibited.** SRU 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 Litigation, or hereafter in lawfully assisting in efforts to enforce, determine or ensure compliance with the terms of this Agreement.

R. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supercedes all prior agreements, negotiations, considerations, and representations between the Parties. No representations, understandings, or agreements have been made or relied on in entering this Agreement, other than those specifically set fort in this Agreement. This Agreement can be amended only by written instrument signed by the duly authorized representative(s) of each of the Parties.

S. **Counterparts.** The Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same document.

T. **Acknowledgement.** The Parties acknowledge and agree that they have read this Agreement, that they understand its meaning and contents, that they have had the advice of their respective counsel, and that they have voluntarily entered into this Agreement, intending to be bound by it. Plaintiffs and SRU represent and warrant to each other that the signatory executing this Agreement is authorized to bind and obligate them/it, which representation/warranty is being relied on by both Plaintiffs and SRU in the acceptance of this Agreement.

IN WITNESS WHEREOF, Plaintiffs and Defendant, by their duly authorized representatives, have executed this Agreement as of the Effective Date set forth above.

ELIZABETH LAURA CHOIKE, ASHLEY GUINEVERE
STONER, HEATHER WALBRIGHT, JESSICA
STUDENT, JENNIFER VENET, ELIZABETH
PENNING, LAURA A. SANFORD, EMILY C.
CAMPBELL, REBECCA ZINN, ALISON NICOLE
NUCKOLS, SARAH S. SANDER, and RACHEAL
BIENIAS, in their own behalf and as representatives of the
putative class:

By: Abbe F. Fletman
Name: Abbe F. Fletman
Title: Attorney for Plaintiffs

SLIPPERY ROCK UNIVERSITY OF PENNSYLVANIA
OF THE STATE SYSTEM OF HIGHER EDUCATION:

By: _____
Name: Robert M. Smith
Title: President


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By: _____
Name: Abbe F. Fletman
Title: Attorney for Plaintiffs

SLIPPERY ROCK UNIVERSITY OF PENNSYLVANIA OF
THE STATE SYSTEM OF HIGHER EDUCATION:

By:  _____
Name: Robert M. Smith
Title: President