

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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ELIZABETH LAURA CHOIKE, et al.,

Plaintiffs,

v.

SLIPPERY ROCK UNIVERSITY OF  
PENNSYLVANIA OF THE STATE  
SYSTEM OF HIGHER EDUCATION, et al.,

Defendants.

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Civil Action No. 06-622

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“the Agreement”) is entered into as of April 6, 2007 (“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 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, (the “Litigation”), 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.

### 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 claim is referred to in this Agreement as the "Participation Claim"); and (2) as stated in count two of the Complaint, failing to provide equitable treatment in availability, quality, and kinds of benefits, opportunities, and treatment afforded female student athletes, including but not limited to equivalence in equipment and supplies; scheduling of games and practice time; travel and per diem allowances; opportunity for coaching and academic tutoring; assignment and compensation of coaches and tutors; locker rooms and other facilities; medical and training services; housing and dining services; publicity; recruitment; and supportive services (which claim is referred to in this Agreement as the "Treatment Claim");

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 not the women's swimming or water polo teams;

WHEREAS, on July 21, 2006, following a hearing, 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, the Parties reached a settlement in principle on September 13, 2006 during a settlement conference held before Magistrate Judge Lisa P. Lenihan on the Participation Claim;

WHEREAS, the Parties submitted a Joint Motion for Preliminary Approval of Partial Settlement, Certification of the Proposed Plaintiff Class, and Appointment of Plaintiffs' Counsel as Class Counsel on December 8, 2006, seeking approval of the settlement of plaintiffs' Participation Claim;

WHEREAS, by Order dated December 14, 2006, the Parties were referred to mediation before Magistrate Judge Lisa P. Lenihan on the Treatment Claim; and

WHEREAS, the Parties have reached a settlement on the Treatment Claim which they desire to make formal and to fully and finally settle the Treatment Claim 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. TREATMENT CLAIM PROVISIONS**

A. **Prospective Athletic Budgeting.** Commencing with the athletic budget applicable to the 2007-08 fiscal year and for athletic budgets for all future fiscal years,

SRU will develop a unified advance athletic budget with input from coaching staff that includes athletic funding from all sources including but not limited to student fees (“Co-op”), state funding (“SAP”), and donations (“Foundation”), and that achieves equity in funding for men’s and women’s varsity athletics. The unified athletic budget will be finalized and delivered to plaintiffs’ counsel no later than August 1 of each year and will include the following categories by team and by gender: equipment/uniforms/supplies; team travel; per diem allowances; game expenses; coaching salaries; facilities maintenance; publicity; recruitment; and athletic financial assistance, as well as any capital expenditures.

B. **Documentation.** SRU will provide to plaintiffs’ counsel the following athletic budget information no later than August 1 each year commencing with August 1, 2007 and continuing for three years following the first academic year in which SRU achieves compliance with the proportionality requirement of Title IX within two percentage points:

1. The prospective athletic budget adopted pursuant to paragraph I.A. by August 1.
2. A summary of total actual athletic expenditures following the completion of the fiscal year by August 1, by team and by gender in the categories used for the prospective athletic budget.
3. For each coach assigned to each team (including the head, assistant, graduate student, student, and volunteer) in the prior academic year, the number of coaches by team, experience level, FTE and salary.
4. A list of the captains of each women’s varsity athletic team for the

then-current academic year.

Should SRU fail to maintain compliance with the proportionality requirement of Title IX within two percentage points in any year within this three-year period, SRU's obligation to provide documentation and prospective unified budgets to plaintiffs' counsel as set forth in paragraphs I.A and B shall run for three years after the most recent year in which SRU has failed to achieve compliance.

C. **Improvements to the Softball Field.** SRU shall immediately improve the softball facility by acquiring and installing individual spectator seating equivalent in quality and proportional in number to the chairback seating currently in place at SRU's baseball stadium. SRU shall assure that the restrooms for spectators provided in the Women's Soccer/Softball Complex are unlocked during games and practices. SRU shall provide a new tarp for the field and a bull pen. SRU also will provide protection behind home plate to assure the safety of spectators from foul balls. In addition, SRU shall groom and maintain the softball field to the same extent as the baseball field.

D. **Improvements to Morrow Field House Locker Rooms and Pool.** SRU shall immediately undertake improvements to the Morrow Field House women's locker rooms to upgrade them at least to the quality of the men's locker rooms, including with respect to the pool and pool locker room: repairing pool steps, ceiling tiles, leaking showers, and pool faucets; repairing doors, removing carpet and replacing with appropriate flooring for an aquatic sport; supplying office with new carpet, one new computer, two new printers, telephone and internet connections, and two new chairs for desks, and repairing the office walls.

E. **Equitable Coaching.** SRU shall provide the women's teams with coaching in

equitable numbers and quality and shall compensate coaches equitably. To the extent that SRU hires faculty-coaches for men's teams in the future, SRU will also hire faculty-coaches for women's teams. SRU will immediately provide for the coaches of the women's teams as many automobiles as are available for use by the coaches of the men's teams. These automobiles will be of the same or equivalent make, model and year as those donated, leased, given, or otherwise made available to the coaches of men's teams.

F. **Medical and Training Needs.** SRU will, commencing immediately, ensure that training and medical personnel are available for all women's varsity teams during all competitions and practices and that the training and medical personnel accord the members of the women's teams the same treatment and attention accorded to male varsity teams.

G. **Policies.** Before the start of the 2007-08 academic year, SRU will adopt and publicize policies that set forth gender equitable treatment regarding the following:

1. Uniforms, including all components (including footwear, headwear, weather-related outer clothing, practice and competition uniforms) and replacement schedule;
2. Transportation, including modes of transportation, duration of stay, meal per diems, quality of housing, and persons per bed for team travel;
3. Equipment allocation for practice and competition;
4. Publicity, including allocation of funds, staffing, guidelines for media guides, posters, and other publicity, and education of sports personnel on athletic equity;

5. Scheduling of trainers, medical personnel, and training facilities to ensure coverage during practice and competition; and
6. Use of automobiles made available to coaches.

These policies shall be provided to plaintiffs' counsel in draft form no later than May 1, 2007. Plaintiffs' counsel shall provide any suggestions to SRU no later than June 1, 2007. If, after reasonable effort, the Parties are unable to resolve a dispute, plaintiffs' counsel may seek a resolution from the Court.

H. **The Additional Fund**. SRU shall set aside \$300,000 to overcome the effects of historical conditions that have limited women's participation in varsity athletics (the "Additional Fund"). The Additional Fund shall be above and beyond any monies SRU spends or has spent to bring the University into compliance with Title IX. One hundred thousand dollars of the Additional Fund shall be expended in each of the three academic years beginning in 2007-08. In each of the three applicable academic years, beginning in 2007-08, at least \$50,000 of the \$100,000 annual allotment shall be used for scholarships to recruit women athletes to compete on SRU varsity teams. SRU's annual proposal of how the \$100,000 per year will be spent shall be provided in writing to plaintiffs' counsel by August 1 of the applicable academic year. The proposal will be made with input from the coaches of women's teams. Plaintiffs' counsel shall provide any suggestions to SRU within 30 days of receipt of the proposal. If, after reasonable effort, the Parties are unable to resolve a dispute, plaintiffs' counsel may seek a resolution from the Court.

I. **Hunkler Scholarship**. SRU shall immediately restore to the women's water polo team monies allocated to the "Billie Hunkler" water polo scholarship fund, which had been withdrawn from the water polo team shortly before the preliminary injunction

hearing in this action. These monies shall be used exclusively for the benefit of the women's water polo team.

J. **Resolution of Disputes.** If plaintiffs have questions or concerns regarding SRU's fulfillment of its obligations under Part I of this Agreement, plaintiffs' counsel shall contact defendant's counsel. Both Parties shall make a good faith effort to resolve any disputes that may arise out of or that are related to SRU's obligations. If plaintiffs' counsel believes they have good cause to seek an interview with SRU's athletic director, assistant athletic director, any coach, any vice-president, president, internal auditor, and/or any assistant coach regarding information contained in any 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 a resolution from the Court. Except in extraordinary circumstances or when the nature of the dispute precludes earlier resolution, plaintiffs shall seek resolution before the end of the then-current academic year. 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.

K. **Athlete-SRU Communication.** SRU agrees to encourage and support the achievements of its female student athletes, including but not limited to publicizing their achievements to the same degree as it publicizes the achievements of its male teams. The vice president of student life of SRU shall, at least once a year, invite the captains of each women's team to meet with him or her, the athletic director and coaches of all the women's varsity teams to provide feedback regarding treatment.

## II. GENERAL PROVISIONS

L. **Limited Effect of Agreement and Commitment to Resolve Remaining Issues.** This Agreement resolves only the Treatment Claim. The Participation Claim has been resolved by separate agreement. Except as provided in paragraph P, attorneys' fees and costs are not resolved by this Agreement. The Parties commit to continue discussions to resolve the remaining issues in the Litigation.

M. **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 Treatment Claim is in the best interests of both plaintiffs and SRU.

N. **Court Approval.** On or before April 30, 2007, 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.

O. **Class Notice.** The Parties have previously submitted a Joint Motion seeking approval of the stipulated class definition as well as a class notice. Should this Joint Motion still be pending upon execution of this Agreement, the Parties shall jointly amend their Motion to request that the Court 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. Should the Court rule upon the Joint Motion prior to execution of this Agreement, the Parties shall submit a Joint Motion seeking final approval of this Agreement and providing for notice to the class thereof and filing of objections thereto. SRU shall bear any and all expenses of providing class notice.

P. **Attorneys' Fees and Costs.** SRU will not contest plaintiffs' entitlement

to attorneys' fees and costs incurred towards resolution of plaintiffs' Treatment Claim -- provided, however, that SRU retains its right to contest the fee amount. SRU further agrees in principle to pay reasonable attorneys' fees and costs incurred to monitor compliance with this Agreement. It is contemplated that future monitoring fees will be included in any settlement of attorneys' fees and costs the Parties reach. The Parties further agree to continue to explore settlement of attorneys' fees and costs in good faith. Unless and until such agreement is reached, however, plaintiffs reserve their right to petition the Court for an award of attorneys' fees and costs and SRU reserves its right to contest the amount of any such award.

Q. **Binding Effect.** This Agreement shall be binding on plaintiffs and defendant, as well as their successors, only if this Agreement is approved by the Court; provided, however, that SRU shall comply with the terms set forth in this Agreement during the pendency of the Court's consideration of the Joint Motion.

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

S. **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.

T. **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.

U. **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 in lawfully assisting in efforts to enforce, determine or ensure compliance with the terms of this Agreement or any Order of this Court entered in connection with this Litigation.

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

W. **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.

X. **Acknowledgment.** 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, individually  
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: Robert M. Smith  
Name: Robert M. Smith  
Title: President