

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

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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, on behalf of	:	
themselves and all similarly situated individuals;	:	
and JAMES V. YEAMANS,	:	Civil Action No. 2:06-cv-00622
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
SLIPPERY ROCK UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER EDUCATION;	:	
ROBERT SMITH, in his official capacity as	:	
President of Slippery Rock University; and	:	
PAUL LUEKEN, in his official capacity as	:	
Director of Athletics of Slippery Rock University,	:	
	:	
Defendants.	:	

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**MEMORANDUM IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Twelve female student-athletes and one athletic coach who are directly and adversely affected by inequitable athletic opportunities and unequal treatment in the athletic program of defendants Slippery Rock University of Pennsylvania (“Slippery Rock”), Slippery Rock President Robert Smith, and Slippery Rock Athletic Director Paul Lueken ask this Court for a temporary restraining order and preliminary injunction prohibiting Slippery Rock from cutting

its women's swim, water polo, and field hockey teams and requiring Slippery Rock to provide these teams with all the incidental benefits of varsity status.

Defendants' impending actions will violate clear precedent in this and other circuits prohibiting the elimination of viable women's intercollegiate athletic teams when the university's athletic program fails to provide substantially proportionate athletic opportunities to female students in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88 ("Title IX"). See *Barrett v. West Chester Univ. of Pa.*, No. 03-CV-4978, 2003 WL 22803477 (E.D. Pa. Nov. 12, 2003) (granting preliminary injunction restoring women's gymnastics team); *Favia v. Indiana Univ. of Pa.*, 812 F. Supp. 578 (W.D. Pa. 1993) (granting preliminary injunction restoring women's field hockey and gymnastics teams), *aff'd*, 7 F.3d 332 (3d Cir. 1993); *Roberts v. Colo. State Univ.*, 814 F. Supp. 1507 (granting permanent injunction restoring women's softball team), *aff'd in pertinent part*, 998 F.2d 824 (10th Cir. 1993); *Cohen v. Brown Univ.*, 809 F. Supp. 978 (D.R.I. 1992) ("Cohen I") (granting preliminary injunction restoring women's varsity gymnastics and volleyball teams and ordering Brown to provide all incidental benefits of varsity status), *aff'd*, 991 F.2d 888 (1st Cir. 1993) ("Cohen II").

The need for immediate preliminary relief is urgent. The affected student-athletes complete their current academic year on May 12, 2006, and face the immediate, time-limited, and difficult question of deciding whether to remain at Slippery Rock without the opportunity to participate on the teams that brought them to Slippery Rock in the first place. Incoming accepted students, for whom the selection of Slippery Rock was based on the opportunity to participate on athletic teams that will no longer exist when their college careers commence, must decide whether to attend Slippery Rock or go elsewhere. With the academic year at Slippery Rock and

most colleges and universities beginning in late August, and field hockey a fall sport, time is of the essence.

### **FACTS**

On January 30, 2006, defendant Slippery Rock publicly announced that it had decided to cut eight varsity sports, including women's swimming, women's water polo, and field hockey. See e.g. Pls. Ex. 8 (Yeamans Decl. ¶ 13). The cuts, purportedly made for budgetary reasons, are to take effect on July 1, 2006. *See Rock Will Discontinue 8 Varsity Sports at Conclusion of The 2005-06 Academic Year* (Jan. 30, 2006), available at <http://rockathletics.cstv.com/genrel/013006aao.html>.

Each of the plaintiff student-athletes attends Slippery Rock University and is a member of a varsity team that the University has announced will be eliminated at the end of the current season. Racheal Bienias, Emily Campbell, Elizabeth Choike, Sarah Sander Laura Sanford, and Heather Walbright compete on the water polo team. Racheal Bienias, Emily Campbell, Elizabeth Choike, Elizabeth Penning, Sarah Sander, and Jessica Student are varsity swimmers. Ashley Stoner, Alison Nuckols, Jennifer Venet, and Rebecca Zinn play field hockey. *See, e.g.,* Pls. Exs. 1-7 (Choike Decl. ¶ 3; Stoner Decl. ¶ 1; Walbright Decl. ¶ 1; Student Decl. ¶ 1; Venet Decl. ¶ 1; Penning Decl. ¶ 1; Sanford Decl. at ¶ 1).

The twelve plaintiff student-athletes all elected to attend Slippery Rock in whole or in part because Slippery Rock offered them the opportunity to compete in intercollegiate swimming, water polo, and/or field hockey. For several of the student-athletes, Slippery Rock's athletics program was the most important consideration in their selection of school. *See* Pls. Exs. 1-5 (Choike Decl. ¶ 7; Stoner Decl. ¶ 4; Walbright Decl. ¶¶ 2, 8, 11; Student Decl. ¶ 5; Venet Decl. ¶ 7). Many of the student plaintiffs were specifically recruited by Slippery Rock to play a

sport that the school has abruptly discontinued. *See* Pls. Exs. 1-3, 6-7 (Choike Decl. ¶ 6; Stoner Decl. ¶ 2; Walbright Decl. ¶ 9; Penning Decl. ¶ 4; Sanford Decl. ¶ 4). Many of these students had turned down more generous scholarship offers from other schools. *See* Pls. Exs. 1-2, 6 (Choike Decl. ¶ 8; Stoner Decl. ¶ 5; Penning Decl. ¶ 5).

All of the plaintiffs are accomplished athletes. They all played sports at the varsity level in high school, many with distinction. *See, e.g.*, Pls. Exs 1, 3-7 (Choike Decl. ¶¶ 2-5; Walbright Decl. ¶¶ 4-7; Student Decl. ¶¶ 2-3; Venet Decl. ¶¶ 2-4; Penning Decl. ¶¶ 2-3; Sanford Decl. ¶¶ 2,3). They have experienced strong and successful seasons at Slippery Rock. *See, e.g.*, Pls. Exs. 5, 7-8 (Venet Decl. ¶ 11; Sanford Decl. ¶ 6; Yeamans Decl. ¶¶ 16, 24).

The plaintiffs are also dedicated athletes who endure tough practice and competition schedules to participate in their chosen sport at Slippery Rock. *See* Pls. Exs. 4, 8 (Student Decl. ¶ 8; Yeamans Decl. ¶¶ 5-8). Water polo and swim team members train close to the maximum 20 hours a week permitted by the National Collegiate Athletic Association (a membership association whose core purpose is governance of intercollegiate athletics) and travel long distances on weekends to compete. *See* Pls. Ex. 8 (Yeamans Decl. ¶¶ 5, 6). The plaintiffs are also subject to strict academic requirements and a community service obligation. *See* Pls. Ex. 8 (Yeamans Decl. ¶¶ 8-9). The field hockey team spends significant time practicing and competing and travels all over Pennsylvania in a tiny bus with no room to move and no bathroom facilities. *See* Pls. Exs. 1, 5 (Stoner Decl. ¶¶ 9, 11; Venet Decl. ¶ 16).

Participation on these teams is central to the plaintiffs' happiness at Slippery Rock. *See* Pls. Exs. 1, 3, 6 (Stoner Decl. ¶ 9; Walbright Decl. ¶¶ 3, 11; Penning Decl. ¶¶ 8, 18). Many of them regard their athletic achievements at Slippery Rock as integral to their academic success. *See* Pls. Exs. 1-2, 4 (Choike Decl. ¶ 11; Stoner Decl. ¶ 9; Student Decl. ¶¶ 8, 13). In addition,

several sought the opportunity to play a varsity sport to enhance their career prospects and lost this benefit when their sport was cut. *See* Pls. Exs. 1, 6 (Choike Decl. ¶ 20; Penning Decl. ¶¶ 10, 18).

All of the plaintiff student-athletes will continue to be eligible to compete in their sport for anywhere from two to three more years under applicable rules. *See, e.g.*, Pls. Ex. 6 (Penning Decl. ¶ 8). All would continue to play varsity sports on at least one of the teams if the teams are not eliminated. *See, e.g.*, Pls. Ex. 1-3, 5 (Choike Decl. ¶ 12; Stoner Decl. ¶ 8; Walbright Decl. ¶¶ 3, 17; Venet Decl. ¶ 10).<sup>1</sup>

Plaintiffs and their teammates reacted to the announced athletic cuts with disbelief. *See, e.g.*, Pls. Exs. 1, 3-7 (Choike Decl. ¶ 15; Walbright Decl. ¶ 15; Student Decl. ¶ 12; Venet Decl. ¶ 20; Penning Decl. ¶ 18; Sanford Decl. ¶ 7). These students now face the very difficult choice of remaining at Slippery Rock and most likely never competing in their chosen sport again or transferring to another school. *See* Pls. Exs. 1-4, 7 (Choike Decl. ¶¶ 18-20; Stoner Decl. ¶ 24; Walbright Decl. ¶¶ 16, 17; Student Decl. ¶ 14; Sanford Decl. ¶ 8-9). Because Slippery Rock permits students with certain majors to complete masters' degrees in fewer years than other universities, a student who is majoring in one of these programs would have to spend an additional year completing her studies if she decided to transfer. *See, e.g.*, Pls. Ex. 6 (Penning Decl. ¶ 15). In addition, students contemplating a transfer worry about the possible loss of accumulated credits that might not be accepted by their new school. *See, e.g.*, Pls. Ex. 1, 6 (Choike Decl. ¶ 18; Penning Decl. ¶ 16). Before the announcement that the teams would be cut,

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<sup>1</sup> The day before Plaintiffs filed their complaint, on Monday, May 8, 2006, Plaintiffs Ashley Stoner, Alison Nuckols, Rebecca Zinn, and Jennifer Venet received an email from the Slippery Rock assistant soccer coach stating that the university had changed its mind and was not eliminating field hockey. At the time of filing of the complaint and this motion, Plaintiffs have not received any official word from defendants about this decision.

prospective students had been recruited to participate on the eliminated teams for the upcoming 2006-07 academic year, and some or all elected to attend Slippery Rock for the purpose of participating on one of those teams. *See, e.g.*, Pls. Ex. 8 (Yeaman Decl. ¶¶ 29, 31).

Plaintiffs view the cutting of women's sports to be consistent with the overall inferior manner in which women's sports are treated by Slippery Rock relative to male sports. *See, e.g.*, Pls. Exs. 1-5, 8 (Choike Decl. ¶¶ 13-14; Stoner Decl. ¶¶ 10-21; Walbright Decl. ¶ 18; Student Decl. ¶¶ 9-10; Venet Decl. ¶¶ 15-16; Yeaman Decl. ¶ 34). For example, in addition to having to travel crowded in small vans with their equipment and no bathroom facilities, while men's teams travel in chartered buses, the field hockey team is not provided with essential equipment (hockey sticks and mouth guards) and clothing (warm uniforms or playing shoes). *See* Pls. Exs. 1, 5 (Stoner Decl. ¶¶ 10, 11; Venet Decl. ¶¶ 13-14, 16). Field hockey was recently moved to the brand new football stadium from a poorly maintained, unsafe field, but is subject to being displaced by football and has no on-site locker rooms, requiring the athletes to take the long trip to the stadium while hauling huge bags of equipment. *See* Pls. Exs. 1, 5 (Stoner Decl. ¶¶ 12-14; Venet Decl. ¶¶ 13-14).<sup>2</sup>

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<sup>2</sup> The softball team, for which Plaintiff Ashley Stoner plays, is treated in an equally inferior manner relative to the treatment of the baseball team. The softball team practices and plays on a field located far from the center of campus, which the athletes themselves must groom prior to home competitions. The softball field is equipped with an electronic scoreboard lit by a generator that does not supply enough electricity to last the whole game, has a faulty and inadequate sound system, and lacks adequate seating for fans. *See* Pls. Ex. 1 (Stoner Decl. ¶¶ 15-17). During practices, the women's softball team sometimes does not have a trainer present, and the players must interrupt their practice to make the trip to the locker room whenever a player has an injury requiring attention. *See* Pls. Ex. 1 (Stoner Decl. ¶ 20). In vivid contrast, the men's baseball team enjoys the benefits of a luxurious new stadium and locker facilities publicized on the University's website and in its promotional materials is supplied with trainers, grounds crews, and an excellent sound system. *See* Pls. Exs. 2, 8 (Stoner Decl. ¶¶ 16-18; Yeaman Decl. ¶ 34).

## ARGUMENT

To grant preliminary relief, the Court must evaluate four factors: “(1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.” *U.S. v. Bell*, 414 F.3d 474, 478 n.4 (3d Cir. 2005). Assessment of these factors substantiates the urgent need to grant the relief requested by plaintiffs.

### **A. Plaintiffs Have a Reasonable Probability of Success on the Merits.**

Title IX prohibits sex discrimination in education programs receiving federal financial assistance. 20 U.S.C. § 1681. Title IX’s mandate is specifically applied to athletic programs. 34 C.F.R. § 106.41(a). Title IX requires equity in scholarships, accommodation of athletic interests and abilities, and treatment (*i.e.*, coaching and training, equipment and supplies, publicity, promotional materials, and events, transportation, uniforms, and playing fields, locker rooms, and other facilities). 34 C.F.R. §§ 106.37(c), 106.41(c); Title IX of the Education Amendments of 1972, A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71413-71423 (Dec. 11, 1972) (“Policy Interpretation”)<sup>3</sup>. While plaintiffs’ complaint seeks enforcement of Title IX’s mandates with respect to a broad range of inequities in the defendants’ athletic program, the primary focus of their request for immediate preliminary relief is defendants’ failure to meet the accommodation of their interests and abilities.

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<sup>3</sup> The Office of Civil Rights (“OCR”) of the U.S. Department of Education, and/or its predecessor has periodically promulgated policy interpretations and guidance on Title IX compliance. OCR’s policy statements are entitled to substantial deference. *See Favia*, 812 F. Supp. at 584 (citing *Chevron U.S.A. v. Natural Resources Defense Council Inc.*, 467 U.S. 837 (1984)); *accord Cohen v. Brown Univ.*, 101 F.3d 155, 172-73 (1st Cir. 1996) (“Cohen IV”); *Roberts*, 998 F.2d at 828.

Under Title IX, an educational institution will be found in compliance with the accommodation of interest and abilities requirement if it can demonstrate that it satisfies any one of the following measures:

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
- (3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

Policy Interpretation, *supra*, 44 Fed. Reg. at 71418. Failure to satisfy all three of the parts of this test renders defendants in violation of Title IX.

Plaintiffs bear the burden of establishing the first prong of the three-part test. *Barrett*, 2003 WL 22803477 at \*5; *Favia*, 812 F. Supp. at 584. This prong compares the aggregate proportion of male and female varsity athletes participating on the first day of competition to the proportion of male and female full-time undergraduate students. An athlete is participating if the athlete receives athletically related student aid and/or is practicing with the varsity team and receiving coaching and other team support on the first date of intercollegiate competition for that year. Policy Interpretation, *supra*, 44 Fed. Reg. at 71415; Clarification of Intercollegiate Athletics Policy Guidance: The Three Part Test (Jan. 16, 1996) (“Policy Clarification”), *available at* <http://www.ed.gov/print/about/offices/list/ocr/docs/clarific.html>.

The first step in determining whether Slippery Rock is providing equitable opportunities is to identify the proportion of full-time undergraduates who are female. According to Slippery Rock's gender-ethnicity admissions report, as posted on its website, Slippery Rock's full-time undergraduate population during the 2005-06 academic year was 6,883. Women make up 54.3 percent (3,738) of this population. *See* Pls. Ex. 9 (Gender and Ethnicity: Undergraduate, *available at* <http://administration.sru.edu/ir/genderethnicity/ug-f.pdf>). Therefore, under prong one of the three-part test, roughly 54.3 percent of Slippery Rock's athletic opportunities must be reserved for women.

Of the several different data sets that plaintiffs have unearthed for Slippery Rock's 2005-06 athletic opportunities, none demonstrates that Slippery Rock has even approached equity under the first prong of Title IX's three-part test. For instance, data obtained from analyzing Slippery Rock's athletics website on April 3, 2006, *see* Pls. Ex. 10, show a 14.6 percent difference between female enrollment (54.3 percent) and female athletic opportunities (39.7 percent, based on the online rosters on that date). Another set of numbers, *see* Pls. Ex. 11, provided to plaintiffs' counsel by counsel for Slippery Rock at a meeting on April 20, 2006, and then supplemented with rosters delivered to plaintiffs on April 26, 2006, *see* Pls. Ex. 12, shows a 7.6 percent disparity between female enrollment (54.3 percent) and female athletic opportunities (46.7 percent). Yet a third set of numbers, *see* Pls. Ex. 13, derived from Slippery Rock's website on May 10, 2006,<sup>4</sup> shows a 7.8 percent disparity between female enrollment (54.3 percent) and female athletic opportunities (46.5 percent, according to the rosters on the Slippery Rock website on that date combined with indoor track information provided by Slippery Rock).

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<sup>4</sup> After plaintiffs met with Slippery Rock on April 20, 2006, Slippery Rock changed its website at least twice. None of the website changes reflect the rosters for indoor track and field, a separate sport that Slippery Rock maintains has separate rosters from other track and field sports (outdoor and cross country).

Of the various sets of numbers and rosters made available by Slippery Rock before and after they were contacted by plaintiffs' counsel in an effort to resolve the dispute in a timely manner without resorting to litigation, none is identical to the others; either the names of the student-athletes listed as roster members and/or the numbers vary on each one.

Plaintiffs also have substantial evidence that Slippery Rock has inflated the number of female athletes and understated the number of male athletes to make it appear more compliant with Title IX. Plaintiff James Yeamans, who is Slippery Rock's swim and water polo coach and has first-hand knowledge of the number of athletes participating on the swim and water polo teams in 2005-06, states that the 2005-06 swim and water polo numbers provided by Slippery Rock at the April 20, 2006, meeting are accurate for the men, but not for the women. Instead, the women's numbers are hugely inflated. *See* Pls. Ex. 8 (Yeamans Decl. ¶¶ 22, 25). Coach Yeamans further provides evidence that Slippery Rock had previously instructed coaches to overstate the number of women on the athletic rosters at the beginning of the season to increase the numbers of female athletes. *See* Pls. Ex. 8 (Yeamans Decl. ¶ 21).

In addition, an inference can be drawn that Slippery Rock's revised rosters overstate the number of female athletes based on their content alone. For example, there are 16 inactive female swimmers on the current website roster, *see* Pls. Ex. 11, but no inactive football players, *see id.* Even more suspicious, the inside and outside track numbers provided by Slippery Rock appear to be engineered to reflect more phantom opportunities for women. The number of women participating in indoor and outdoor track are almost the same, but the number of men participating in indoor track is significantly lower than the number participating in outdoor track.

Plaintiffs have sought expedited discovery in this matter to resolve these disparities and get to the bottom of the numbers in this case.<sup>5</sup>

Regardless of which set of numbers one examines, none of the analyses of the numbers plaintiffs have proffered, which produce disparities ranging from 7.6 to 14.6 percent, shows Slippery Rock to be in compliance with the proportionality prong of the Title IX participation tests. Substantial proportionality has been interpreted to require a very close correlation between enrollment and athletic participation opportunities. *See* Policy Clarification, *supra*. While there may be circumstances in which a difference of a few points will not result in a finding of noncompliance, *see id.*, all of the available numbers are off by more than just a few points. Most importantly, when there is a disparity and the number of opportunities required to achieve proportionality is sufficient to sustain a team, as there undoubtedly is here, a finding of noncompliance is warranted. *See id.* Moreover, the disparity in athletic opportunities for women is likely to be far greater than it currently appears because Slippery Rock has encouraged its coaches to report their teams' rosters inaccurately, decreasing the number of male athletes and increasing the number of female athletes. Thus, given the various data sets that all show a disparity, compounded by the multiple indications that Slippery Rock is manipulating the data to hide its noncompliance, plaintiffs have a reasonable likelihood of succeeding in proving that Slippery Rock is offering substantially disproportionate athletic opportunities for its female students.

If plaintiffs succeed in proving the first prong of the three-part test, the burden shifts to the defendants under the second and third prongs. *Favia*, 812 F. Supp. at 584. In light of its

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<sup>5</sup> *See* Plaintiff's Motion for Expedited Discovery filed simultaneously with the instant Motion. Plaintiffs seek limited targeted discovery in order to prepare for a hearing on their Motion and have provided the Court with these narrowly tailored requests.

planned elimination of viable teams, it is almost impossible for Slippery Rock to demonstrate that it complies with Title IX based on either of the other two parts of the three-part test. The second prong has been interpreted as requiring an institution's positive ongoing response to the interests and abilities of the underrepresented sex through present as well as past good faith expansion. *See* Policy Clarification, *supra*. First, because Slippery Rock is planning to eliminate three viable women's teams, it is precluded from showing a *positive ongoing* response to the interests and abilities of the underrepresented sex because it will be eliminating, rather than expanding, women's opportunities. Second, as Slippery Rock has not added a new team for women in at least nine years, when it last added and then soon thereafter eliminated women's lacrosse and ice hockey, it cannot show a continuing expansion. *See Barrett*, 2003 WL 22803477 at \*7 (finding periods in excess of a decade too long to constitute continued expansion); *Bryant v. Colgate Univ.*, No. 93-cv-1029 (N.D.N.Y. June 11, 1996) (denying university's motion for summary judgment and finding this prong not met due to four-year hiatus since addition of a women's varsity team); *Cohen v. Brown Univ.*, 879 F. Supp. 185, 211 (D.R.I. 1995) ("*Cohen III*") (finding failure to demonstrate a continuing practice of program expansion where last varsity team was added nine years before demotion of gymnastics and volleyball, and another varsity team not added until during the litigation).

Nor does Slippery Rock's simultaneous elimination of male teams ameliorate its actions. In the first place, the cuts in men's teams do not result in any improvement in Slippery Rock's proportionality. Second, even if they did, such action cannot satisfy the second prong, because the test requires "good faith remedial efforts through actual program expansion." *See Barrett*, 2003 WL 22803477 at \*10 (rejecting West Chester's argument that simultaneous elimination of

the men's lacrosse team brings it closer to proportionality and allows it to eliminate women's gymnastics) (citing *Roberts*, 998 F.2d at 830); *see also* Policy Clarification, *supra*.

Similarly, the third prong of the test, requiring full and effective satisfaction of interests and abilities, cannot be satisfied if there is expressed interest among the female students, sufficient interest and ability to maintain viable teams, and a reasonable expectation of competition for the team. *See Roberts*, 814 F. Supp. at 1517; *Cohen I*, 809 F. Supp. at 992; *Cohen II*, 991 F. 2d at 898. The fact that the three women's teams that Slippery Rock plans to eliminate are themselves viable and competitive teams that have experienced no break in competition and have sufficient eligible members committed to play is conclusive evidence that interest and ability are not effectively satisfied. *See Roberts*, 988 F.2d at 832 (finding question less vexing when "plaintiffs seek the reinstatement of an established team rather than the creation of a new one"); *Cohen II*, 991 F.2d at 904 (noting unlikelihood of any question as to interest and ability where plaintiffs seek "merely to forestall the interment of healthy varsity teams"). The fact that there are students admitted by Slippery Rock for the 2006-07 academic year who were specifically recruited to participate in one or more of these teams and/or applied to and accepted Slippery Rock's admission with the intention of participating on these three teams further speaks to the teams' viability. *See* Pls. Ex. 8 (Yeamans Decl. ¶¶ 28-33); *see also* Policy Clarification, *supra*.

Slippery Rock's financial situation, the reason given to the plaintiffs for the planned elimination of their teams, does not serve as a valid defense to the elimination of women's teams when women's athletic interests and abilities are not effectively accommodated. The courts that have been presented with this argument have roundly rejected it as a reason to deny relief to the plaintiffs. As this Court stated in *Favia*, "Title IX does not provide for any exception to its

requirements simply because of a school's financial difficulties. In other words, a cash crunch is no excuse.” 812 F. Supp. at 583; *see also Cohen II*, 991 F.2d at 906 (noting that “the pruning of athletic budgets cannot take place solely in comptrollers’ offices, isolated from the legislative and regulatory imperatives that Title IX imposes”).

**B. Plaintiffs Will Suffer Irreparable Injury If This Court Does Not Immediately Prohibit Slippery Rock University From Cutting Swimming, Water Polo, and Field Hockey and Requiring Equitable Treatment of These Teams.**

Plaintiffs seek preliminary injunctive relief because they will suffer irreparable harm to their ability to compete in interscholastic athletics if Slippery Rock is allowed to cut the proposed athletic teams. Plaintiffs have devoted much of their lives to playing one or more of these sports. In fact, the sport is so central to their lives that, for many of the plaintiffs, the important life decision about which school to attend for college revolved around the fact that particular schools offered these sports. *See* Pls. Exs. 1-6 (Choike Decl. ¶¶ 7-8; Stoner Decl. ¶¶ 4-5; Walbright Decl. ¶¶ 2, 8, 11; Student Decl. ¶ 5; Venet Decl. ¶ 7; Penning Decl. ¶ 5). For many of them, their opportunity to play the sport they love ends when college ends, as there are very few careers or other post-graduate opportunities available in these sports. *See* Pls. Exs. 2, 4 7 (Stoner Decl. ¶ 24; Student Decl. ¶ 14; Sanford Decl. ¶¶ 8-9). If Slippery Rock were to be allowed to continue with the cuts it has proposed, plaintiffs’ opportunities to live their dreams of playing their sport at the college level, the last level of competition available to them, will be taken from them prematurely. Unless they transfer to another college, uprooting their entire lives, they will forever lose their chance to swim in another swim meet, to play in another water polo game, or take the field in another field hockey game.

If plaintiffs cannot participate in intercollegiate athletics, they lose more than just the opportunity to compete; they also lose an important factor contributing to their overall physical,

mental, and educational well-being. In *Favia*, this Court appropriately noted the nature of the lost benefits and the brief window of opportunity to obtain them: “[T]hey develop skill, self-confidence, learn team cohesion, and a sense of accomplishment, increase their physical and mental well-being, and develop a lifelong healthy attitude. The opportunity to compete in undergraduate interscholastic athletics vanishes quickly, but the benefits do not.” *Favia*, 812 F. Supp. at 583. A recent study from the Women’s Sports Foundation surveyed research into the effects that sports have on girls’ and women’s lives. Female student-athletes have better academic success, including in science and mathematics, two subjects stereotypically associated with men’s success. Increasing the amount of physical activity for girls and women lowers their risk of developing heart disease, cancer, obesity, osteoporosis, and Alzheimer’s disease. Participation in athletics decreases the likelihood of high-risk behavior such as smoking, illicit drug use, a variety of sexual risk behaviors, and unintended pregnancies. Physical activity for women is also associated with lower rates of depression and suicidal behavior and increased self-esteem. Women’s Sports Foundation, *Her Life Depends on It: Sport, Physical Activity and the Health and Well-Being of American Girls* 8-31 (2004).

Courts have consistently recognized that the loss of opportunity to compete in intercollegiate athletics constitutes irreparable injury. See *Butts v. Nat’l Collegiate Athletic Ass’n.*, 600 F. Supp. 73, 76 (E.D. Pa. 1984), *aff’d*, 751 F.2d 609 (3d Cir. 1984); *McHale v. Cornell Univ.*, 620 F. Supp. 67, 69 (N.D.N.Y. 1985); *Carnes v. Tenn. Secondary Sch. Athletic Ass’n*, 415 F. Supp. 569, 572 (E.D. Tenn. 1976). Specifically in the Title IX context, courts have concluded that members of discontinued women’s varsity teams had shown irreparable harm and were entitled to preliminary relief. See *Cohen II*, 991 F.2d at 904-05; *Favia*, 812 F. Supp. at 583. As this Court said in *Favia*, “We believe that the harm emanating from lost opportunities [to

compete in undergraduate interscholastic athletics] for the plaintiffs [is] likely to be irreparable.”  
*Id.*

Furthermore, no amount of money can compensate plaintiffs for the loss of this opportunity to pursue their dream and engage in intercollegiate competition. *See Roberts*, 998 F.2d at 833 (concluding that monetary relief was inadequate where “defendant’s continuing violation of Title IX operates to deprive plaintiffs of the opportunity to play softball”).

**C. Slippery Rock University Will Not Suffer Irreparable Harm If Preliminary Injunctive Relief Is Granted, and the Harm to Plaintiffs Far Exceeds Any Putative Harm to Slippery Rock University.**

Slippery Rock cannot point to any irreparable harm that it will suffer if ordered not to eliminate the three women’s teams scheduled for elimination. The expense of maintaining these teams is negligible relative to the University’s entire budget. *See* Pls. Ex. 8 (Yeamens Decl. ¶14) (noting that the coach convinced the university not to eliminate the water polo team in 1989 and again in 2001 for fiscal reasons, since the water polo team was budgeted for only \$9,000 while out-of-state team members were paying \$5,000 to \$6,000 per athlete to attend the University). Moreover, the small expense that Slippery Rock will pay to maintain these teams pales in comparison to the harm, described above, that will be done to plaintiffs’ interests if they are denied the irreplaceable opportunity to participate in intercollegiate athletics.

**D. The Public Interest Supports Preliminary Injunctive Relief.**

The public interest strongly favors plaintiffs’ request for injunctive relief necessary to prevent sex discrimination under Title IX. As stated in previous Title IX litigation by many courts, “[p]romoting compliance with Title IX serves the public interest.” *Barrett*, 2003 WL 22803477 at \*15; *Favia*, 812 F. Supp. at 585 (“The public has a strong interest in prevention of any violation of constitutional rights [relating to sex discrimination in education].”); *Cohen I*,

809 F. Supp. at 1001 (stating that “the public interest will be served by vindicating a legal interest that Congress has determined to be an important one”). Defendants can point to no counterbalancing interest in this case; therefore, the Court should enter preliminary injunctive relief.

### **CONCLUSION**

For the foregoing reasons, plaintiffs respectfully request that this Court issue a temporary restraining order and preliminary injunction prohibiting defendants from eliminating women’s swimming, women’s water polo, and field hockey as Slippery Rock-sponsored intercollegiate teams, requiring defendants to provide these teams with funding, staffing, and other benefits commensurate with their status as intercollegiate teams, prohibiting defendants from eliminating any other Slippery Rock-sponsored women’s intercollegiate teams unless, both before and after the elimination, equality of opportunity for women has been achieved, and prohibiting defendants from retaliating against plaintiffs or class members in any manner for asserting their legal rights to equal opportunity and equal treatment.

Respectfully submitted,

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