



to provide equitable athletic opportunities for its female students and equitable treatment of female student athletes, including its announced elimination of three viable women's athletic teams. Slippery Rock's actions have caused harm to plaintiffs and constitute intentional discrimination based on sex in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88 ("Title IX").

2. Title IX requires educational institutions receiving federal funds to provide equal opportunity and equal treatment without regard to gender. Slippery Rock has failed to provide its female students with an equal opportunity to participate in athletics. Specifically, Slippery Rock has failed to satisfy any of the following measures of compliance with Title IX's mandate to provide equal opportunity:

- (a) providing female student athletes with athletic opportunities at a rate that is "substantially proportionate" to their undergraduate full-time enrollment rate; or
- (b) demonstrating a "history and continuing practice of program expansion responsive to the interests and abilities of the sex that has been historically underrepresented"; or
- (c) showing that the interests and abilities of the historically underrepresented sex have been fully and effectively accommodated.

3. Plaintiffs seek immediate reinstatement of these women's teams as well as additional judicial remedies to ensure defendants' compliance with Title IX.

## **JURISDICTION AND VENUE**

4. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1343(a)(3), (4). Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper pursuant to 28 U.S.C. § 1391(b), as all of the claims arose in the Commonwealth of Pennsylvania and within the Western District of Pennsylvania.

## **PARTIES**

6. Plaintiff Elizabeth Laura Choike is a full-time student and athlete at Slippery Rock and a resident of Fort Leonard Wood, Missouri.

7. Plaintiff Ashley Guinevere Stoner is a full-time student and athlete at Slippery Rock and a resident of Harrisburg, Pennsylvania.

8. Plaintiff Heather Walbright is a full-time student and athlete at Slippery Rock and a resident of Worthington, Ohio.

9. Plaintiff Jessica Student is a full-time student and athlete at Slippery Rock and a resident of Drexel Hill, Pennsylvania.

10. Plaintiff Jennifer Venet is a full-time student and athlete at Slippery Rock and a resident of Mechanicsburg, Pennsylvania.

11. Plaintiff Elizabeth Penning is a full-time student and athlete at Slippery Rock and a resident of Woodbridge, Virginia.

12. Plaintiff Laura A. Sanford is a full-time student and athlete at Slippery Rock and a resident of Stevensville, Maryland.

13. Plaintiff Emily C. Campbell is a full-time student and athlete at Slippery Rock and a resident of Mechanicsburg, Pennsylvania.

14. Plaintiff Rebecca Zinn is a full-time student and athlete at Slippery Rock and a resident of Dillsburg, Pennsylvania.

15. Plaintiff Alison Nicole Nuckols is a full-time student and athlete at Slippery Rock and a resident of Midlothian, Virginia.

16. Plaintiff Sarah S. Sander is a full-time student and athlete at Slippery Rock and a resident of Loveland, Ohio.

17. Plaintiff Racheal Bienias is a full-time student and athlete at Slippery Rock and a resident of Tinley Park, Illinois.

18. Plaintiff James V. Yeamans is an employee of Slippery Rock University and a resident of Slippery Rock, Pennsylvania. Plaintiff Yeamans is the coach of the Slippery Rock women's water polo team and interim coach of the Slippery Rock women's swimming team. Coach Yeamans joins this action as a plaintiff to vindicate his rights and the rights of the student athletes he has coached in the past and expects to coach in the future.

19. Defendant Slippery Rock has its principal place of business in Slippery Rock, Pennsylvania, and is a public corporation that is a member of the Pennsylvania State System of Higher Education. Slippery Rock receives federal financial assistance.

20. Defendant Robert M. Smith, who is being sued in his official capacity, is the president of Slippery Rock University. As president, Dr. Smith is responsible for the overall operation of Slippery Rock and for ensuring that it complies with all federal and state non-discrimination mandates.

21. Paul Lueken, who is sued in his official capacity, is director of athletics of Slippery Rock. As the director of athletics, Mr. Lueken is primarily responsible for the day-to-

day operation of Slippery Rock's intercollegiate athletic program, including its compliance with Title IX.

### **CLASS ACTION ALLEGATIONS**

22. The individual student plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(2) on behalf of themselves and on behalf of a class consisting of all present and future Slippery Rock female students, including currently enrolled students, students admitted for the 2006-07 academic year, and prospective 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.

23. All class members are aggrieved persons under federal civil rights law as a result of Slippery Rock's actions, policies, and practices. The named individual student plaintiffs seek declaratory and injunctive relief on behalf of themselves and all class members to prevent defendants from engaging in future unlawful conduct and to rectify the effects of present and past discrimination.

24. This matter is properly maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2) in that:

(a) The class members are so numerous as to make joinder of all of them impracticable. Based on information and belief, the number of athletic opportunities allotted to female students is not substantially proportionate to the number of female students in the 6,883 person full-time student body, which is 54.3 percent female. All female students at Slippery Rock face unlawful barriers to intercollegiate athletic participation and unequal treatment by their school's athletics program. Furthermore, Slippery Rock's decision to eliminate three viable

women's varsity teams directly harms the members of those teams, as well as all future Slippery Rock students who might have had the interest and ability to participate at the varsity level on the disbanded teams.

(b) There are questions of law and fact common to the class members. These common questions of law and fact predominate over any particular questions concerning individual class members. The common questions include defendants' compliance with Title IX as well as common facts involving Slippery Rock's athletics programs and the school's treatment of its female athletes.

(c) The claims of the named individual student plaintiffs, which involve claims of unequal athletic opportunities and treatment, are typical of the claims of the proposed class members.

(d) The named student plaintiffs will fairly and adequately protect the interests of the class members. Their attorneys have many years of experience in Title IX actions, class actions, and women's rights litigation.

(e) Defendants have acted on grounds generally applicable to the class, thereby making final declaratory and injunctive relief appropriate with respect to the class as a whole.

## **STATEMENT OF FACTS**

### **Athletics at Slippery Rock**

25. Defendants have failed to provide equal athletic opportunities for women and have provided more opportunities and better opportunities for male athletes than for female athletes.

26. For each and every year from 2001 through 2005, defendant Slippery Rock has failed to provide substantially equal opportunities for its female students. According to Slippery Rock's own published reports, the difference between the full-time undergraduate female population and female athletic population during those four years has ranged from 5.8 percent to 11.2 percent, but Slippery Rock has never during that time achieved athletic equality.

27. Upon information and belief, Slippery Rock's full-time undergraduate enrollment during the 2005-06 academic year is 6,883. Women comprise 54.3 percent of the full-time undergraduate student body.

28. The percentage of female athletes during the 2005-06 academic year is not substantially proportionate to the percentage of full-time female students.

29. Defendant Slippery Rock lacks a continuing history and ongoing practice of expanding athletic opportunities for its female students. In fact, defendants have cut three viable teams and have not added a single team for women in at least nine years.

30. Defendant Slippery Rock's intercollegiate athletic program does not fully and effectively accommodate the interests and abilities of its women students.

31. Defendants' athletic program does not provide equal treatment for female and male athletes. Defendants have failed to give their female athletes substantially equal treatment in coaching and training, equipment and supplies, publicity, promotional materials and events, transportation, uniforms, playing fields, locker rooms, and other facilities.

### **Cuts in Women's Teams**

32. Despite its continuing failure to provide substantially equal participation opportunities to its female student body, on January 30, 2006, defendant Slippery Rock publicly announced that it had decided to cut eight varsity sports: men's and women's swimming, men's

and women's water polo, field hockey,<sup>1</sup> golf, wrestling, and men's tennis. The cuts, purportedly made for budgetary reasons, are to take effect on July 1, 2006.

33. The women's teams that Slippery Rock has decided to cut—swimming, water polo, and field hockey—are viable, competitive teams.

34. Upon information and belief, the cuts will increase the already substantial disparity between full-time female undergraduates and female athletic opportunities at Slippery Rock.

### **Impact on Student-Athletes**

35. The plaintiff student-athletes include six freshmen and seven sophomores. Each of the plaintiff student-athletes now 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. These student-athletes are deeply distressed about the loss of their teams.

36. All of the plaintiff student-athletes 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.

37. The plaintiff student-athletes reacted to the news that their teams had been eliminated with shock, sorrow, and disbelief. Their participation on these teams is central to their happiness at Slippery Rock. Many of them regard their athletic achievements at Slippery Rock as integral to their academic success. 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.

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<sup>1</sup> Late yesterday, 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 school had changed its mind and was not eliminating field hockey. At the time of filing this Complaint, Plaintiffs have not received any official word from defendants about this decision.

38. All of the plaintiffs are accomplished athletes. All of the plaintiff student-athletes played sports at the varsity level in high school, many with distinction. All of the plaintiff student-athletes turned down offers from other schools to attend Slippery Rock University. Some of the plaintiff student-athletes were offered much larger scholarships and more generous student aid packages by other schools than Slippery Rock offered them.

39. 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. All would continue to play varsity sports on at least one of the eliminated teams if the teams were reinstated.

40. In response to losing their opportunity to play their sport at Slippery Rock, some of the plaintiff student-athletes are considering transferring to other schools that offer their sport. Some of them have not yet decided what to do. Still others have decided that, at least for the coming semester, they will continue to attend Slippery Rock despite their unhappiness over the loss of their sport because of the difficulties involved in transferring to another school. Some of these students are worried that their credits would not be accepted by another school; or that they would have to attend college for an additional year to complete their degree.

41. The cuts in women's sports have affected incoming students, as well as currently enrolled students. Upon information and belief, before the announcement that the teams would be cut, 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.

42. Slippery Rock's failure to provide equal opportunity and equal treatment for female students in its athletics program has also harmed female students who do not currently

play sports, as well as prospective and incoming female students, by deterring them from participating in athletics and narrowing their athletic options.

43. The individual defendants have operated the intercollegiate athletic program in a manner that permits and fosters the gender-based inequities described in this complaint.

44. As a result of defendants' unlawful actions, plaintiffs and class members have suffered and continue to suffer lost educational opportunities and benefits, including unequal treatment in Slippery Rock's athletic program and the imminent loss of the opportunity to participate in the eliminated women's teams.

### **STATEMENT OF CLAIMS**

#### **COUNT I: TITLE IX – EQUAL PARTICIPATION**

45. Plaintiffs incorporate by reference paragraphs 1 through 44.

46. Defendants have failed to meet any of the three criteria for compliance with Title IX's equal participation requirement.

47. The elimination of three viable women's teams places defendants even further out of compliance with Title IX.

#### **COUNT II: TITLE IX – EQUAL TREATMENT**

48. Plaintiffs incorporate by reference paragraphs 1 through 47.

49. Defendants' failure to treat female athletes substantially equally with respect to coaching and training, equipment and supplies, publicity, promotional materials and events, transportation, uniforms, playing fields, locker rooms, and other facilities violates Title IX's equal treatment requirements.

## **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request that this Court enter judgment in their favor and award the following relief:

(a) Certify this action as a class action for declaratory and injunctive relief on behalf of all present and future Slippery Rock female students, including currently enrolled students, students admitted for the 2006-07 academic year, and prospective 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;

(b) Declare that defendants have engaged in a continuing pattern and practice of discrimination against women on the basis of sex in intercollegiate athletics in violation of Title IX and its applicable regulations, policy interpretation, and clarifications;

(c) Issue a temporary restraining order and preliminary injunction ordering defendants not to eliminate women's swimming, women's water polo, and field hockey as Slippery Rock-sponsored intercollegiate teams, to provide these teams with funding, staffing, and other benefits commensurate with their status as intercollegiate teams, and prohibit 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;

(d) After a hearing on the merits, issue a final injunction ordering defendants not to eliminate women's swimming, women's water polo, and field hockey as Slippery Rock-sponsored intercollegiate teams and 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; prohibiting defendants from retaliating in any manner against plaintiffs or class members for asserting their legal rights to equal opportunity and equal treatment; and prohibiting defendants from treating Slippery Rock's female athletes in a gender-discriminatory manner;

(e) Award plaintiffs their costs and expenses, including an award of reasonable attorneys' fees;

(f) Award such other and further relief as this Court deems just and proper.

Respectfully submitted,

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\*Motion for Admission Pro Hac Vice Pending