

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

**STEPHANIE BIEDIGER, KAYLA LAWLER
ERIN OVERDEVEST, KRISTEN
CORINALDESI, and LOGAN RIKER
individually and on behalf of all
those similarly situated;
and
ROBIN LAMOTT SPARKS, individually,**

Plaintiffs,

v.

QUINNIPIAC UNIVERSITY,

Defendant.

Case No. 3:09-CV-621(SRU)

CLASS ACTION

December 9, 2009

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs STEPHANIE BIEDIGER, KAYLA LAWLER, ERIN OVERDEVEST, KRISTEN CORINALDESI, and LOGAN RIKER are female students and varsity athletes at Defendant QUINNIPIAC UNIVERSITY (“QU” or “Defendant”). These Plaintiffs file this action individually and on behalf of a class of all other similarly situated females (the “Student Plaintiffs”). Plaintiff ROBIN LAMOTT SPARKS is the head volleyball coach at Quinnipiac University. She files this action individually and not on behalf of a class (“Coach Sparks”). Plaintiffs respectfully file this complaint and allege as follows:

STATEMENT OF THE CASE

1. The Student Plaintiffs file this case as a class action on behalf of themselves and on behalf of a class of current, prospective, and future female students at Quinnipiac University (“QU”) who are harmed by and want to end QU’s sex discrimination in: (1) the allocation of

athletic participation opportunities; (2) the allocation of athletic financial assistance; and (3) the allocation of benefits provided to varsity athletes. They similarly file this action on behalf of females who are deterred from enrolling at QU because of the sex discrimination in QU's athletic program, including its failure to offer the varsity sports in which they want to participate (despite QU's failure to provide equal athletic participation opportunities to females).

2. The Student Plaintiffs allege that Defendant's ongoing sex discrimination in the operation of its varsity athletic program violates Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) and the regulations adopted pursuant thereto (34 C.F.R. Part 106) (collectively, "Title IX").

3. Coach Sparks alleges that Defendant has discriminated against her and continues to discriminate against her in the terms and conditions of her employment because of the sex of the student athletes she coaches. She further alleges that Defendant's planned elimination of the women's volleyball program, and with it her job as head volleyball coach, constitutes further discrimination against her because of the sex of the student athletes she coaches.

4. Coach Sparks alleges that Defendant's ongoing sex discrimination against her because of the sex of her student athletes violates Title IX.

5. All Plaintiffs allege that Defendant has engaged in and continues to engage in retaliation against them because Plaintiffs opposed and/or complained about Defendant's sex discrimination and Title IX violations. Plaintiffs allege that this retaliation violates Title IX.

JURISDICTION AND VENUE

6. The first, second, and third legal claims on behalf of the Student Plaintiffs arise under 20 U.S.C. § 1681, et seq. and its interpreting regulations. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1343(3), and 1343(4).

7. The fourth legal claim on behalf of the Coach Plaintiff arises under 20 U.S.C. § 1681, et seq. and its interpreting regulations. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1343(3), and 1343(4).

8. The fifth legal claim on behalf of all Plaintiffs arises under 20 U.S.C. § 1681, et seq. and its interpreting regulations. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1343(3), and 1343(4).

9. This court has jurisdiction and authority to enter declaratory and other relief pursuant to 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper pursuant to 28 U.S.C. § 1391(b). These claims arose in and Defendant is located in Hamden, Connecticut, which is within the jurisdiction of this court.

THE PARTIES

11. Plaintiff Stephanie Biediger is a female student and varsity athlete at Defendant Quinnipiac University. During the school year Plaintiff resides in Hamden, Connecticut, which is within the jurisdiction of this court.

12. Plaintiff Kayla Lawler is a female student and varsity athlete at Defendant Quinnipiac University. During the school year Plaintiff resides in Hamden, Connecticut, which is within the jurisdiction of this court.

13. Plaintiff Erin Overdevest is a female student and varsity athlete at Defendant Quinnipiac University. During the school year Plaintiff resides in Hamden, Connecticut, which is within the jurisdiction of this court.

14. Plaintiff Kristen Corinaldesi is a female student and varsity at Defendant Quinnipiac University. During the school year Plaintiff resides in Hamden, Connecticut, which is within the jurisdiction of this court.

15. Plaintiff Logan Riker is a female student and varsity athlete at Defendant Quinnipiac University. During the school year Plaintiff resides in Hamden, Connecticut, which is within the jurisdiction of this court.

16. Plaintiff Robin Lamott Sparks is the head volleyball coach at Quinnipiac University. Plaintiff resides in Hamden, Connecticut, which is within the jurisdiction of this court.

17. Defendant Quinnipiac University is a private university of higher education. It is located in Hamden, Connecticut, which is within the jurisdiction of this court.

18. Quinnipiac University receives federal financial assistance and the benefits therefrom. Therefore, all programs at QU, including intercollegiate athletics, are subject to the requirements of Title IX.

CLASS ALLEGATIONS

19. The Student Plaintiffs bring this action on behalf of themselves and, pursuant to Rule 23(A) and B(2) of the Federal Rules of Civil Procedure, on behalf of all those similarly situated. In particular, the Student Plaintiffs seek to represent a class of all present, prospective, and future female students who are harmed by and want to end QU's sex discrimination in: (1) the allocation of athletic participation opportunities; (2) the allocation of athletic financial assistance; and (3) the allocation of benefits provided to varsity athletes. They also file this action on behalf of females who are deterred from enrolling at QU because of the sex discrimination in its athletic program, including its failure to offer the varsity sports in which they want to participate (despite QU's failure to provide equal athletic participation opportunities to females).

20. Each of the named Student Plaintiffs is a member of the proposed class and is now or will be injured by the ongoing sex discrimination in Defendant's varsity athletic program. Defendant's intended elimination of the women's varsity volleyball program will exacerbate this discrimination by eliminating female varsity athletic participation opportunities.

21. The Student Plaintiffs seek to represent the proposed class because joinder of all class members and all persons harmed by the ongoing sex discrimination in Defendant's varsity athletic program is not just impracticable, but impossible.

22. Joinder is impracticable because the class includes members whose identities are not currently known. On information and belief, there are present female students at QU whose names are currently unknown but who would participate in varsity athletics at QU if Defendant did not discriminate in the operation of its athletic program or if Defendant offered the sports or events in which they want to participate. There are also present female student athletes at QU who do not receive an equitable allocation of athletic financial assistance or the benefits provided to varsity athletes.

23. Joinder is impracticable because the class includes unknown and unidentifiable prospective and future students who will enroll at QU during the course of this litigation or who will be deterred from enrolling at QU because of the sex discrimination in Defendant's varsity athletic program.

24. Joinder is also impracticable because of the inherently fluid nature of the proposed class. Even though the proposed class is known to exist, the identities of its members will change during the course of this litigation due to the nature of college enrollment and athletic participation. In particular, QU is a university with an ever-changing student body whose members graduate after approximately four years of enrollment. Its varsity student athletes are

allowed only four years of athletic eligibility under the rules of the National Collegiate Athletic Association (“NCAA”). Accordingly, the membership of the class harmed by Defendant’s sex discrimination constantly changes as students graduate from QU and as new classes/groups of graduating high school students enroll as freshmen at QU.

25. It is unknown how many present, prospective, or future female students are enrolled or will enroll at QU during the course of this litigation. Nor is it known how many females would enroll as students at QU or would participate in athletics at QU if QU stopped the ongoing sex discrimination in its athletic program. The hundreds of additional class members who would apply to QU, who would be recruited by QU coaches to attend QU, and who would participate in athletics at QU if Defendant added the athletic opportunities and scholarships necessary to reach equal opportunity are too numerous to make joinder practicable.

26. The Student Plaintiffs satisfy the “commonality” requirement of Fed.R.Civ.P. 23(a)(2), because they share questions of law and fact in common with the proposed class, particularly whether QU engages in sex discrimination and violates Title IX in: (1) the allocation of athletic participation opportunities; (2) the allocation of athletic financial assistance; and (3) the allocation of treatment and benefits to varsity athletes. Because Title IX athletics claims require comparison of the sex-segregated men’s and women’s athletic opportunities as a whole (rather than individually), the issues are inherently class-based.

27. The Student Plaintiffs satisfy the “typicality” requirement of Fed.R.Civ.P. 23(a)(3), because their claims are typical of those of the proposed class: (1) they are denied or imminently will be denied an equal opportunity to participate in varsity athletics at QU because of Defendant’s ongoing sex discrimination; (2) they are or imminently will be denied an equal allocation of athletic financial assistance; and/or (3) they are denied or imminently will be denied

an equal allocation of the treatment and benefits provided to varsity athletes at QU.

28. All members of the proposed class are harmed by or imminently will be harmed by the ongoing sex discrimination in QU's varsity athletic program.

29. The Student Plaintiffs are members of the proposed class and will fairly and adequately represent the interests of the class pursuant to Fed.R.Civ.P. 23(a)(4). They intend to prosecute this action vigorously in order to secure remedies for the entire class. Moreover, the Court will be responsible for entering fair and adequate injunctive relief if and when Plaintiffs prevail.

30. The undersigned class counsel include attorneys experienced in federal civil rights litigation and class actions, particularly under Title IX, and will adequately represent the interests of the class in this action.

31. The Student Plaintiffs satisfy the class certification requirements of Fed.R.Civ.P. 23(b)(2), because Defendant has acted or refused to act on grounds generally applicable to the class thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

32. In particular, all class members are entitled to a declaration that QU engages in sex discrimination and violates Title IX because Defendant either violates Title IX as to all female students or it does not. Moreover, all class members are entitled to injunctive relief (1) to restrain QU from eliminating any women's varsity sports and/or to require QU to add more women's varsity sports; (2) to require QU to allocate more athletic financial assistance to female athletes; and (3) to provide female athletes with the same treatment and benefits provided to male athletes.

THE REQUIREMENTS OF TITLE IX

33. Title IX, enacted in 1972, provides in relevant part:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...

20 U.S.C. § 1681(a).

34. The Civil Rights Restoration Act of 1987 made plain Congress' intent that “program or activity,” as used in Title IX, applies to any program or activity offered by an educational institution that receives federal financial assistance – whether or not the program itself receives such assistance. 20 U.S.C. § 1687. Because QU receives federal financial assistance, its athletic program is subject to Title IX and QU must comply with its requirements.

35. In the statute, Congress expressly delegated authority to the United States Department of Health, Education and Welfare (“HEW”) to promulgate regulations interpreting Title IX. 20 U.S.C. §1682. In 1975, HEW promulgated these regulations at 45 C.F.R. Part 86. The United States Department of Education (“DOE”) later adopted these regulations and codified them at 34 C.F.R. Part 106 (collectively, the “Regulations”). These regulations are enforced by the Office for Civil Rights (“OCR”) within DOE. The Regulations are attached hereto as Exhibit 1.

36. The Regulations require that federal fund recipients like QU undertake remedial and affirmative efforts to eliminate sex discrimination. 34 C.F.R. ' 106.3(a) & (b). They further direct schools to evaluate their own policies and actions; to modify any policies and actions that are discriminatory; and to take remedial steps to eliminate the effects of discriminatory actions. 34 C.F.R. ' 106.3(c). These mandates apply whether or not anyone has complained about discrimination.

37. On information and belief, Defendant has not undertaken sufficient remedial or affirmative action to remedy the historical and ongoing sex discrimination in its athletic program.

38. The Regulations require that recipients like Defendant adopt nondiscrimination policies and grievance procedures, appoint and train a Title IX officer to receive and investigate sex discrimination complaints, and disseminate this information to all students, faculty, and employees. 34 C.F.R. §§ 106.8 & 106.9.

39. The Regulations further require that recipients confirm and promise compliance by filing an Assurance of Compliance with DOE each time they apply for or receive federal financial assistance. 34 C.F.R. § 106.4. The Assurance is a condition precedent to the receipt of federal funds. In the Assurance, schools must assure DOE that they comply with Title IX and that they will continue to do so. The Assurance also commits applicants/recipients “to take whatever remedial action is necessary in accordance with § 106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination.” 34 C.F.R. § 106.4. A blank copy of DOE’s Assurance of Compliance Form is attached hereto as Exhibit 2.

40. On information and belief, QU has completed and submitted many Assurance of Compliance forms to DOE and has received federal funds from DOE even though QU’s athletic program has never complied with Title IX.

41. The Regulations include specific prohibitions that state:

in providing any aid, benefit, or service to a student,
a recipient shall not, on the basis of sex

- (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

- (3) Deny any person any such benefit or service;
-
- (6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit, or service to students or employees.

42. The Regulations also prohibit sex discrimination in the recruitment of students.

Schools may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 106.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 106.3(b).

43. On information and belief, Defendant has not undertaken sufficient remedial or affirmative recruiting efforts to ensure that it offers female students an equal opportunity to participate in varsity athletics; nor has it provided its women's teams with the resources necessary to adequately recruit female athletes with NCAA Division I athletic skills.

44. The Regulations prohibit sex discrimination in the allocation of athletic scholarships. In particular, 34 C.F.R. § 106.37(c) provides:

To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

45. Regulation 34 C.F.R § 106.41(a) requires that recipients provide athletic equity at each separate level of competition. In particular, it states:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and the recipient shall provide any such athletics separately on such basis.

46. The Regulations identify ten (10) non-exclusive areas in which recipients must

provide equal athletic opportunity. These include:

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
2. The provision of equipment and supplies;
3. Scheduling of games and practice time;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms, practice and competitive facilities;
8. Provision of medical and training services;
9. Provision of housing and dining facilities and services; and
10. Publicity.

34 C.F.R. § 106.41(c). A school's "failure to provide necessary funds for teams for one sex" also may be indicative of sex discrimination. Id.

47. In 1979, OCR issued a policy interpretation of Title IX and the Regulations in order to provide recipients with more specific guidance about the statute's application to intercollegiate athletics. This policy interpretation is found at 44 Federal Register 71,413 (1979) (the "Policy Interpretation"). A copy of the Policy Interpretation is attached hereto as Exhibit 3.

48. The Policy Interpretation notes that the Regulations address club and varsity sports separately and states that "club teams will not be considered to be intercollegiate teams except in those instances where they regularly participate in varsity competition." 44 F.R. at 71413-71414 n.1. Recipients must provide equal opportunity at each level of competition.

49. The Policy Interpretation provides that, in order to comply with Title IX and 34

C.F.R. § 106.41(c), schools must provide equal athletic opportunities in three general areas: (1) athletic participation (34 C.F.R. § 106.41 (c)(1), (2) athletic benefits to those who already have athletic participation opportunities (34 C.F.R. § 106.41(c)(2)-(9)), and (3) athletic financial assistance (34 C.F.R. § 106.37). See Policy Interpretation, 44 F.R. at 71,414.

50. According to the Policy Interpretation, compliance in the area of athletic participation opportunities is determined by the following Three-Part Test:

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments;
- (2) where the members of one sex have been and are under-represented 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 under-represented 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.

See 44 Fed.Reg. 71,418

51. This Three-Part Test was further clarified after notice and comment in OCR's 1996 Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (the "1996 OCR Clarification"). A copy of the 1996 OCR Clarification is attached hereto as Exhibit 4.

52. Compliance in the area of equal athletic benefits is assessed under the factors set forth in 34 C.F.R. 106.41(c) plus recruitment and support services. The specific requirements are detailed in the Policy Interpretation. See 44 F.R. at 17,415-71,417.

53. Compliance in the area of equal athletic financial assistance is assessed pursuant to 34 C.F.R. §106.37 and the Policy Interpretation. See 44 F.R. at 71,415. OCR's application of

these requirements is detailed in a “Dear Colleague” letter dated July 23, 1998, which incorporated OCR’s July 23, 1998, guidance to Bowling Green University. A copy of the “Dear Colleague” letter is attached hereto as Exhibit 5.

54. Title IX delegates to OCR the authority to investigate and enforce the statute. 20 U.S.C. §1682. OCR uses the guidelines described above when it investigates and enforces the Title IX statute. OCR also provides its guidance materials to all recipients and makes them available on its website (www.ed.gov/ocr).

55. All twelve federal courts of appeal that have considered OCR’s regulations and policy guidelines, including the Three-Part Test, have held that they are valid interpretations of the statute and have accorded them substantial deference in applying Title IX and/or in assessing Title IX compliance.

56. The Regulations require that sponsors of intercollegiate athletics (such as Defendant) take such remedial actions as are necessary to overcome the effects of sex discrimination in violation of Title IX. See 34 C.F.R. § 106.3(a). On information and belief, Defendant has never provided females with an equal opportunity to participate in varsity athletics and has not taken sufficient remedial actions to satisfy its obligations under Title IX.

57. The Regulations gave recipients only one year to come into full compliance with all Title IX requirements -- except athletics. 34 C.F.R. § 106.41(d) gave colleges three years -- until July 1978 -- to come into full compliance with Title IX’s athletic provisions. The regulation expressly sets the three-year deadline as an outer limit for compliance and obligates schools to comply “as expeditiously as possible but in no event later than three years from the effective date of this regulation.” On information and belief, Defendant did not comply with the athletic regulations by the 1978 compliance deadline or at any time thereafter. Today, more than 30 years

later, Defendant still does not fully comply with Title IX.

58. The Regulations expressly prohibit employment discrimination in educational programs. 34 C.F.R. § 106.51 et seq. (Subpart E). In particular, Section 106.51(a)(1) states:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment... under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

59. Section 106.51(a)(3) states: “A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination.”

60. Title IX’s prohibition of discrimination on the basis of sex covers, among other things: compensation, job assignments, fringe benefits, termination, and any other term, condition, or privilege of employment. 34 C.F.R. § 106.52(b). Title IX prohibits sex discrimination in employment based upon the sex of the employee and based upon the sex of the students taught or athletes coached by the employee.

GENERAL FACTUAL ALLEGATIONS

61. Quinnipiac University sponsors a broad varsity, intercollegiate athletic program. It sponsors separate sports and separate teams for both men and women, including: men’s ice hockey, women’s ice hockey, men’s basketball, women’s basketball, men’s cross country, women’s cross country, men’s lacrosse, women’s lacrosse, men’s soccer, women’s soccer, men’s tennis, women’s tennis, men’s baseball, women’s softball, women’s field hockey, and women’s volleyball. Until this year, QU also sponsored men’s golf (but not women’s golf).

62. QU also purports to offer women’s indoor track and women’s outdoor track. Until this academic year, QU also purported to offer men’s indoor track and men’s outdoor track.

On information and belief, QU does not now and did not previously sponsor genuine women's or men's track teams of any kind, does not offer women genuine athletic participation opportunities in track, and thus cannot count any students as "track" athletes for purposes of Title IX.

63. On information and belief, QU does not offer genuine athletic participation opportunities in track sprints, hurdles, throwing, jumping, or pole vaulting. QU does not recruit athletes to participate in these events and does not offer athletic scholarships to anyone to participate in these events.

64. On information and belief, QU's purported track program consists only of cross country runners who can already participate in spring track events as cross country runners under NCAA rules. Thus, calling and counting female cross country runners as "track" athletes does not provide them – let alone any other students - with any additional athletic participation opportunities.

65. Even if QU did or does sponsor a genuine women's track program, it cannot, for purposes of Title IX, count twice athletes who run both indoor and outdoor track, because they are the same sport -- just as it cannot (and does not) count twice athletes who participate in baseball, softball, lacrosse, tennis, golf (before its elimination this year), or any other sport even though they participate in the same sport in different venues, in different seasons, or in different academic terms.

66. In choosing which sports it will offer to the students of each sex, QU chooses how many varsity athletic participation opportunities it provides to male students and how many athletic participation opportunities it provides to female students. This fact makes athletics unlike other educational programs in which male and female students participate together or compete against each other for the same opportunities or class slots on an equal basis.

67. On information and belief, QU chooses and has chosen which sports it provides to each sex in a manner that provides and has provided its male students with proportionally more opportunities to participate in varsity intercollegiate athletics than it has provided its female students, thus denying female students an equal opportunity to participate in this educational program.

68. Quinnipiac University is a member of the NCAA and participates at the highest level of intercollegiate competition -- Division I. As such, QU offers athletic financial assistance (i.e., athletic scholarships) to members of its varsity athletic teams.

69. Like other Division I schools, QU recruits high school students to apply to and to enroll at QU for the purpose of participating on its varsity athletic teams. QU also offers athletic financial assistance to these high school recruits in order to entice them to apply to and to enroll at QU.

70. Most of the named Student Plaintiffs were recruited to attend QU in order to participate on its women's varsity volleyball team. They expected to participate in volleyball during each of their years at QU and planned their academic, personal, and financial lives accordingly. They would not have enrolled at QU but for the opportunity to participate in women's varsity volleyball and to receive athletic financial assistance.

71. In March, 2009, QU announced its intention to eliminate women's volleyball, men's golf, and men's outdoor track.

72. After QU's announcement, the named Student Plaintiffs and/or Coach Sparks opposed and complained about the planned elimination of the women's varsity volleyball program. They demanded that QU not eliminate the program, but QU instead affirmed its intent to do so and informed Coach Sparks that her job would end as of July 1, 2009.

73. On March 27, 2009, Plaintiff counsel sent Defendant a letter objecting to the planned elimination of the women's varsity volleyball program, explaining why the elimination of the program would constitute sex discrimination in violation of Title IX, and requesting an opportunity to discuss continuation of the volleyball program. QU failed to respond to the letter until it was notified of the pendency of this lawsuit, and then rejected Plaintiffs' demand.

74. In April, 2009, Plaintiffs filed their original complaint in this action, along with a motion for preliminary injunction to enjoin QU from eliminating the volleyball program or any other women's team at QU.

75. The Court held a hearing on the motion for preliminary injunction in May, 2009. On May 22, 2009, the Court entered a preliminary injunction, barring QU from eliminating any women's team, from reducing its support for the women's volleyball team, and from terminating Coach Sparks pending trial or further order of the Court.

INJUNCTIVE RELIEF

76. Plaintiffs are entitled to injunctive relief that restrains Defendant from continuing to discriminate on the basis of sex in: (1) the allocation of athletic participation opportunities; (2) the allocation of athletic financial assistance; and (3) the allocation of the benefits provided to varsity athletes.

77. In particular, Plaintiffs are entitled to injunctive relief that restrains Defendant from eliminating any women's varsity athletic team and that requires Defendant to add new women's varsity athletic teams in new sports in order to expand the number of women's athletic participation opportunities until QU complies with Title IX.

78. Plaintiffs are further entitled to injunctive relief that requires QU either to allocate more athletic financial assistance to women's teams or to allocate its existing athletic financial

assistance in a nondiscriminatory manner.

79. Plaintiffs are also entitled to injunctive relief that requires QU to provide its female athletes with the same benefits it already provides its male athletes.

80. Failure to grant the requested injunctive relief will cause irreparable harm by continuing Defendant's sex discrimination against its present, prospective, and future female students (including Plaintiffs). Such discrimination will forever deny them an equal opportunity to participate in the valuable educational program of varsity intercollegiate athletics B one that provides academic, physical, psychological, social, and even economic benefits for the rest of the participants' lives. There is no adequate remedy at law for this harm.

81. The continuing, irreparable harm caused by Defendant's discriminatory actions far outweighs any possible harm that granting the injunctive relief might cause Defendant, because the requested injunctive relief is already mandated by federal law and because QU was already required to comply with that law more than 30 years ago.

82. Restraining Defendant's elimination of the varsity women's volleyball program in particular merely maintains the status quo. Defendant will suffer no harm by keeping the women's varsity volleyball program except the monetary cost of the program that it has already borne for more than 25 years.

83. The lifelong harm caused to Plaintiffs by Defendant's sex discrimination is irreparable and can never be compensated with money. This harm far outweighs any monetary cost incurred by Defendant. Importantly, Defendant need not incur additional costs to comply with the law. It could choose to allocate its athletic opportunities, athletic financial assistance, and athletic benefits more equitably by merely shifting its longstanding favoritism toward men to a more equal allocation among men and women. Meanwhile, Defendant will gain public relations

and enrollment advantages – and avoid future OCR enforcement investigations - by coming into compliance with Title IX and by offering more opportunities for its female students.

84. Congress decided that ending sex discrimination in education is in the public interest when it enacted Title IX. It has reaffirmed that public interest over the past 37 years by defeating each and every attempt that has been made to weaken Title IX. The injunctive relief that Plaintiffs request will promote the public interest in that it will increase equal opportunities for female students in educational athletics, will end sex discrimination, will promote compliance with federal law, and will stop the use of federal funds for discriminatory purposes.

85. Coach Sparks is entitled to the injunctive relief she requests (restraining Defendant from eliminating the volleyball program and her job as volleyball coach and requiring Defendant to provide her nondiscriminatory employment terms and conditions) for the same reasons that the Student Plaintiffs are entitled to such relief.

ATTORNEYS' FEES

86. Plaintiffs have been required to retain the undersigned attorneys to prosecute this action. Plaintiffs are entitled to recover reasonable attorneys' fees and expenses pursuant to 42 U.S.C. § 1988.

FIRST CLAIM FOR RELIEF: TITLE IX
(Unequal Allocation of Athletic Participation Opportunities)
(on behalf of Student Plaintiffs and the proposed class)

87. Plaintiffs reallege and incorporate herein by this reference all of the foregoing paragraphs of this complaint.

88. The Student Plaintiffs bring this claim as a class action as set forth in the class allegations.

89. Defendant determines the number of athletic participation opportunities that it will provide to male and female students by choosing which sports it will offer to students of each sex and by choosing how many athletes it will reasonably allow to participate on each sports team.

90. On information and belief, Defendant fails to provide female students an equal opportunity to participate in varsity intercollegiate athletics. This failure constitutes intentional sex discrimination in violation of Title IX and 34 C.F.R. § 106.41(c)(1).

91. On information and belief, Defendant fails to comply with each prong of the Three-Part Test outlined above. In particular, Plaintiffs allege that:

- (1) The ratio of female to male athletes at Defendant is not substantially proportionate to the overall ratio of female to male full time undergraduate students at Defendant;
- (2) Defendant does not have a history or continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of its female students; and
- (3) Defendant has failed to fully and effectively accommodate the athletic interests and abilities of its female students.

92. Under the 1996 OCR Clarification, enrollment and athletic participation opportunities are “substantially proportionate” if the number of additional athletic participation opportunities required to increase the athletic participation percentage to the enrollment

percentage is too small to sustain a viable varsity team. See OCR Clarification at p. 5, examples A&B.

93 For purposes of prong one of the Three Part Test, athletic participation opportunities are measured by counting the actual number of athletes who receive a genuine athletic participation opportunity. See Policy Interpretation at 71,415; 1996 OCR Clarification at 3.

94 The Equity in Athletics Disclosure Act (“EADA”)(20 U.S.C. §1092(g)) requires that Defendant provide DOE with certain information about its athletic program, including its enrollment and athletic participation numbers. According to the Defendant’s EADA reports that Plaintiffs have reviewed, Defendant does not provide female students with varsity athletic participation opportunities in a ratio that is substantially proportionate to female enrollment. Accordingly, in order to comply with prong one, QU cannot eliminate existing women’s teams but instead must add more women’s teams.

95 On information and belief, QU already requires its existing women’s teams to carry more female athletes on their rosters than are reasonable or necessary, so that these excess athletes do not actually exist, do not actually compete, or do not actually receive a genuine NCAA Division I athletic experience. Accordingly, QU cannot merely add more women to its existing teams but instead must add more women’s teams.

96. On information and belief Defendant misrepresents the number of athletes on its existing teams in order to falsely appear to comply with prong one of the Three-Part Test when it does not in fact.

97. On information and belief, QU has made such misrepresentations to Plaintiffs, DOE, the NCAA, and in this action. Indeed, Plaintiffs already proved some of this misrepresentation at the hearing on their motion for preliminary injunction. QU has furthered such misrepresentations by claiming Title IX compliance on the Assurance of Compliance forms it submits to DOE in order to obtain federal funding.

98. On information and belief, Defendant currently misrepresents or in the recent past has misrepresented its athletic participation numbers in some or all of the following ways:

- a. Over-reporting the number of women athletes on teams
- b. Under-reporting the number of male athletes on teams
- c. Manipulating the team squad sizes around the first competition date
- d. Counting some team squad sizes based upon their preseason or nontraditional season rosters rather than based upon their competition season rosters
- e. Padding the size of women's teams until after the first date of competition and then cutting or forcing the extra women to quit
- f. Padding the size of women's teams so that they are too large to provide some members a genuine NCAA Division I varsity opportunity, include some members who do not have the skills to participate at the Division I level, and distract resources and coaching from the athletes who have the Division I skills and actually will compete
- g. Claiming it sponsors a genuine women's track team when it does not have sprinters, hurdlers, throwers, or jumpers and when it thus can never win any track meet in which athletes purportedly compete
- h. Claiming it has women's indoor and outdoor track teams and then counting athletes who purportedly compete on such teams as if they competed in two separate sports
- i. Counting participants in competitive cheer as athletes for purposes of Title IX even though QU knows or should know that OCR has never accepted any cheer program as a sport, QU itself has never treated cheer as a sport, no female ever asked that cheer be treated as a sport, and insufficient competition exists for such a sport (even if it existed) at this point in time

Some or all of these counting schemes lead to misreporting of the number and gender ratio of QU's athletic participation opportunities, thus contributing to inaccurate representations about whether QU complies with prong one of the Three-Part Test.

99. On information and belief, QU has made such misrepresentations and continues to make such misrepresentations even though it knows they do not accurately reflect the genuine athletic participation opportunities provided to female students..

100. On information and belief, Defendant failed to meet the July, 1978, deadline for compliance with Title IX's requirement for equity in athletic participation opportunities. On further information and belief, Defendant has never met this Title IX requirement and has not added any new female varsity sports in over 10 years. Thus, Defendant cannot show a history or continuing progress of program expansion for women. Instead, Defendant is threatening to shrink, rather than expand, its women's athletic program, by eliminating women's varsity volleyball.

101. Defendant does not fully and effectively accommodate the athletic interests and abilities of its present, prospective, or future students. On information and belief, there are present, prospective, and future students at QU (including Plaintiffs) who have the interest or ability to participate in sports that Defendant either plans to eliminate or does not sponsor (e.g., volleyball, track, bowling, fencing, golf, gymnastics, rowing, swimming). If QU added female participation opportunities in these sports, there are many females in the geographic area with the interest and ability to participate in them.

102. On information and belief, there are many other prospective and future students who are deterred or will be deterred from enrolling at QU because it does not offer additional sports. If QU added female participation opportunities in these sports, there are many females in

the geographic area from which QU draws most of its students with the interest and ability to participate in them.

103. On information and belief there are prospective and future students who participate in these sports in Connecticut and neighboring states and who have the interest and ability to participate in these sports in college. For example, high schools and high school athletic associations in Connecticut and throughout the geographic region sponsor many women's sports not offered by QU.

104. On information and belief, Connecticut high schools and the Connecticut Interscholastic Athletic Conference ("CIAC"), offer sports and championships in women's volleyball, bowling, golf, gymnastics, swimming, and track.

105. On information and belief, high schools and high school athletic associations in neighboring states provide athletic participation opportunities for females in volleyball, bowling, golf, gymnastics, swimming, track, rowing, rifle, fencing, and ski.

106. On information and belief, the Council of New England Secondary Schools Principals' Associations hosts region-wide high school championships for female athletes in golf, gymnastics, and swimming. Thus, there are many prospective and future QU female students in Connecticut and New England alone that play and want to play sports that QU does not offer for its female students.

107. On information and belief, if QU hired a coach to recruit female students to participate in sports that QU either wants to eliminate or does not sponsor, if QU offered athletic scholarships in these sports, and if QU provided equitable athletic benefits to athletes who participate in these sports, then QU could offer several more varsity athletic participation opportunities for female students and thus could more fully and effectively accommodate their

athletic interests and abilities.

108. QU must continue to add new women's sports to meet this large, unmet interest among present, prospective, and future students until QU can meet another prong of the Three-Part Test.

109. Competition exists for QU to participate in intercollegiate volleyball and in the sports that QU should add to accommodate the large unmet interest of its present, prospective, and future female students.

110. Competition clearly exists in volleyball because QU has offered the sport for many years, as have other schools in QU's athletic conferences.

111. NCAA member schools sponsor teams in and the NCAA itself sponsors women's national championships in basketball, bowling, crew/rowing, cross country, equestrian, fencing, field hockey, golf, gymnastics, ice hockey, lacrosse, rifle, ski, soccer, softball, swimming & diving, tennis, track, volleyball, and water polo. Thus, there is competition available for QU in these sports. Moreover, the fact that numerous NCAA member schools recruit females to participate in these sports shows that there are present, prospective, and future students who have the interest and ability to participate in them.

112. QU is a member of the Northeast Conference ("NEC"). NEC women's sports include basketball, bowling, cross country, field hockey, golf, lacrosse, soccer, softball, swimming & diving, tennis, track, and volleyball. Thus, there is competition available for QU in these sports. Moreover, the fact that other schools in QU's own athletic conference recruit females to participate in these sports shows that there are present, prospective, and future students who have the interest and ability to participate in them.

113. On information and belief, QU sponsors ice hockey even though the NEC does not

sponsor this sport. Accordingly, QU joined a separate athletic conference, the Eastern Collegiate Athletic Conference (“ECAC”), to give its ice hockey teams intercollegiate competition. On information and belief, the ECAC sponsors the following women’s sports: volleyball, basketball, softball, field hockey, soccer, lacrosse, tennis, cross country, track, bowling, golf, gymnastics, rowing, swimming, and water polo. Thus, there is competition available for QU in these sports. Moreover, the fact that other schools in QU’s own athletic conference recruit females to participate in these sports shows that there are present, prospective, and future students who have the interest and ability to participate in them.

114. On information and belief, QU has never surveyed its past, present, or prospective students to assess their athletic interests or abilities or to determine if they would enroll at QU if it offered opportunities in more sports for them.

115. Because QU has never provided enough athletic participation opportunities for its female students, it has a continuing remedial and affirmative obligation to expand opportunities until it reaches equality. Defendant has failed and continues to fail to meet this obligation.

116. Defendant will exacerbate its existing pattern and practice of sex discrimination in its allocation of athletic participation opportunities if it is not restrained from eliminating women’s sports teams such as varsity volleyball.

117. All QU students would benefit if QU stopped discriminating in the operation of its athletic program and if QU offered its female students more sports participation opportunities.

118. On information and belief, in order to obtain or retain its NCAA Division I status, QU was required to engage in a self-study of its athletic program. The 2006 report of that study indicates that QU knows that it does not offer female students an equal opportunity to participate in varsity athletics and that it does not comply with Title IX. Nonetheless, Defendant plans

imminently to decrease rather than increase competitive opportunities for its female students in this education program.

119. On information and belief, QU cannot eliminate any more men's varsity intercollegiate sports without jeopardizing its membership in NCAA Division I. Thus, QU must add more women's opportunities rather than cut men's opportunities in order to comply with the equal athletic participation opportunity requirements of Title IX.

120. Plaintiffs are harmed by Defendant's failure to provide its female students with an equal opportunity to participate in varsity athletics because they want to participate in sports that QU either does not offer or that QU intends to eliminate. Such harm includes lost educational opportunities, lost athletic financial assistance, emotional distress, pain, anxiety, and other damages to be proven at trial. Accordingly, they are entitled to the relief requested herein.

SECOND CLAIM FOR RELIEF: TITLE IX
(Unequal Allocation of Athletic Financial Assistance)
(on behalf of Student Plaintiffs and the proposed class)

121. Plaintiffs reallege and incorporate herein by this reference all of the foregoing paragraphs of this complaint.

122. The Student Plaintiffs bring this claim as a class action as set forth under the class allegations.

123. QU provides athletic financial assistance to some of its varsity athletes.

124. Under Title IX, QU must provide its female students with an equal allocation of any athletic financial assistance that it provides. Under 34 C.F.R. §106.37, an equal allocation means that QU must provide its female athletes with athletic financial assistance in the same proportion that it allocates athletic participation opportunities.

125. On information and belief, Defendant fails to provide female student athletes with an equal allocation of athletic financial assistance. This failure constitutes intentional sex discrimination in violation of Title IX and 34 C.F.R. § 106.37.

126. On information and belief, QU has not sufficiently increased the amount of athletic financial assistance it provides to female athletes to match any purported increase in female athletic participation opportunities. QU has failed to increase the athletic financial assistance available to its women's teams even though it has significantly increased the number of women athletes on those teams. As a result, it is not only more difficult to recruit athletes, but also to recruit athletes with sufficient skill to participate at the Division I level.

127. Plaintiffs are harmed by Defendant's failure to provide its female students with an equal allocation of athletic financial assistance. Such harm includes lost educational opportunities and financial assistance and lost quality in participation opportunities. It also includes emotional distress, pain, anxiety, and other damages to be proven at trial. Accordingly, they are entitled to the relief requested herein.

THIRD CLAIM FOR RELIEF: TITLE IX
(Unequal Allocation of Athletic Treatment & Benefits)
(on behalf of Student Plaintiffs and the proposed class)

128. Plaintiffs reallege and incorporate herein by this reference all of the foregoing paragraphs of this complaint.

129. The Student Plaintiffs bring this claim as a class action as set forth under the class allegations.

130. QU provides its varsity student athletes with certain benefits, including but not limited to, equipment, supplies, uniforms, locker rooms, scheduling for competitions,

transportation and accommodations for travel, per diem for travel, coaching, tutoring and academic support services, practice and competition facilities, medical and training services, weight training and conditioning services, housing and dining services, sports information and publicity services, recruiting, video support, and other services.

131. Under Title IX and 34 C.F.R. §106.41(c), QU must allocate these benefits equally between male athletes and female athletes. On a program-wide basis, it must provide female athletes with benefits that are comparable to those that it provides to male athletes.

132. On information and belief, Defendant fails to provide female student athletes with an equal allocation of these benefits. This failure constitutes intentional sex discrimination in violation of Title IX.

133. On information and belief, QU has not sufficiently increased the amount of benefits (or the resources and budgets necessary to purchase the benefits) it provides to female athletes to match its purported increase in female athletic participation opportunities.

134. On information and belief, QU has failed to increase or provide sufficient benefits (or the resources and budgets necessary to purchase the benefits) to its women's varsity athletic teams despite requiring that they carry significantly more athletes. Meanwhile, QU has not decreased the benefits that it provides to men's varsity athletic teams even though they now carry significantly fewer athletes. As a result, while each male athlete now receives more or better benefits, each female athlete now receives fewer or worse benefits than in prior years.

135. On information and belief, Defendant fails to provide equal athletic benefits in some or all of the categories set forth in the Regulations and the Policy Interpretation, including but not limited to:

1. The provision of equipment, uniforms, and supplies;

2. Scheduling of games and practice time;
3. Travel, transportation, and per diem allowance;
4. Opportunity to receive coaching and academic tutoring;
5. Assignment and compensation of coaches and tutors;
6. Provision of locker rooms, practice and competitive facilities;
7. Provision of medical and training services;
8. Provision of housing and dining facilities and services;
9. Publicity & sports information services;
10. Administrative support;
11. Recruiting resources and support; and
12. Resources necessary to provide any of the foregoing benefits or to provide the female athletes with a genuine Division I athletic experience.

136. Plaintiffs are harmed by Defendant's failure to provide its female student athletes with an equal allocation of benefits and resources. Such harm includes lost educational opportunities and lost competitive advantage and less quality in participation opportunities. It also includes emotional distress, pain, anxiety, and other damages to be proven at trial. Accordingly, they are entitled to the relief requested herein.

FOURTH CLAIM FOR RELIEF: TITLE IX
(Discrimination in Terms and Conditions of Employment, & Termination)
(on behalf of Coach Sparks)

147. Plaintiffs reallege and incorporate herein by this reference the foregoing paragraphs of this complaint.

138. On information and belief, in 2006 QU considered eliminating certain women's

sports, including volleyball. However, after conducting the self-evaluation required to maintain its NCAA Division I status, QU determined that it was not in compliance with Title IX and that it could not eliminate a women's sport without violating Title IX or jeopardizing its NCAA certification.

139. In August, 2007, QU hired Coach Sparks to be the head volleyball coach. Knowing that QU considered eliminating volleyball in 2006, Coach Sparks asked about QU's commitment to the volleyball program. QU assured Coach Sparks that it intended to keep and fully support the women's volleyball program into the future.

140. Based upon these promises, Coach Sparks accepted the job and moved her family from Troy, New York, to Hamden Connecticut. Coach Sparks, as the primary income earner in her family, would not have uprooted herself, her husband, and her daughter and would not have accepted a reduction in her earnings but for the promises made to her about QU's long-term commitment to the volleyball program.

141. Coach Sparks began recruiting athletes for the volleyball team soon after her hiring. She began training and coaching the existing athletes in August, 2007, and coached them throughout the fall 2007 competition season. Although college volleyball teams play their regular season games during the fall, they practice, condition, and scrimmage nearly year-round. Thus, coaches must train, coach, counsel, recruit, and operate the program year-round. They also must monitor the academic performance of their athletes year-round.

142. Despite Defendant's assurances to Coach Sparks, in March 2009, QU announced its intention to eliminate women's varsity volleyball and Coach Sparks' job effective July 2009.

143. Defendant's elimination of Coach Sparks' job and her volleyball program constitutes discrimination against her based upon the sex of the athletes she coaches. This

intentional discrimination violates Title IX.

144. Despite QU's promises to fully support Coach Sparks and the women's volleyball team, it has not done so. Instead, QU has discriminated against and continues to discriminate against Coach Sparks in the compensation, terms, and conditions of her employment because of the sex of the athletes she coaches. This intentional discrimination also violates Title IX. This discrimination has included, among other things:

- a. Coach Sparks must perform more work than men's coaches because she has less institutional support. She must prepare and maintain her own court and clean it up afterwards. She must put more time into coaching, counseling, and monitoring the academic progress of her athletes because she does not have any full time assistant coaches or any adequately paid part-time coaches. She also does not have the support of an equipment manager or a director of volleyball operations. Sometimes Coach Sparks even must launder her team's uniforms.
- b. QU does not provide Coach Sparks enough athletic scholarships to recruit a full, competitive Division I team, thus making it more difficult for her to do her job and to develop a successful program.
- c. QU does not provide Coach Sparks with adequate administrative or secretarial support to run the daily operations of the volleyball program.
- d. QU does not provide Coach Sparks with the resources necessary to recruit enough athletes with the skill to compete at the Division I level, which has adversely affected her competitive success, recruiting, and professional reputation.
- e. QU does not provide Coach Sparks with any full time assistant coaches or other support personnel to help run the program, coach, tutor, counsel, and otherwise monitor the athletes on her team,

f. QU does not provide Coach Sparks with sufficient assistance in the promotion, marketing, and publicity of her program.

g. Coach Sparks does not have access to a locker facility.

h. QU denied Coach Sparks access to QU facilities to run team practices in the off-season. She was also prevented from starting volleyball practices at the same time as other volleyball teams, thus putting her and her team at a significant, competitive and recruiting disadvantage.

i. QU does not provide Coach Sparks with the resources necessary to run the volleyball program at the Division I level, which has adversely affected her competitive success, recruiting, and professional reputation.

j. Coach Sparks does not have access to the video and media equipment necessary to analyze her team's performance.

k. Because the women's volleyball team does not have adequate support from an athletic trainer, strength & conditioning coach, assistant coaches, graduate assistant coaches, academic advisors, sports information support, or secretarial support, Coach Sparks must work much harder and longer to provide these missing needs herself – without receiving additional pay.

145. As a result of Defendant's discrimination, Coach Sparks was forced to work significantly more for less money, benefits, and personal time and was forced to do so with significantly fewer resources, thereby making her job more difficult and reducing her chances for competitive success, which in turn, has adversely affected her professional reputation.

146. As a result of Defendant's actions, Coach Sparks has been and will be harmed. Such harm includes significantly more work, lost employment, lost compensation and benefits, lost leisure and family time, and lost professional status and reputation. It also includes emotional

distress, pain, humiliation, anxiety, and other damages to be proven at trial.

147. Coach Sparks seeks an injunction to prevent elimination of the volleyball program and her job. She seeks continued employment as head coach of the volleyball program, but without discrimination in the terms and conditions of that employment, including pay and benefits and the financial and administrative resources necessary to fully and properly perform her job, develop her skills and career, and operate her team at the Division I level.

FIFTH CLAIM FOR RELIEF: TITLE IX RETALIATION
(on behalf of the named Plaintiffs)

148. Plaintiffs reallege and incorporate herein by this reference the foregoing paragraphs of this complaint.

149. The named Plaintiffs complained about sex discrimination in QU's athletic program, including its attempt to eliminate the women's volleyball program and Coach Sparks' job. Plaintiffs, through counsel, also sent QU a demand letter and filed this legal action.

150. In response to these complaints, QU has taken adverse actions against the named Plaintiffs. On information and belief, these adverse actions include some or all of the following, among other things

- a. Stating that Plaintiffs and/or their law suit are the reason for QU's termination of men's teams.
- b. Stating that Plaintiffs and/or their law suit are taking resources away from academic programs.
- c. Threatening to cut men's teams after Plaintiffs filed this action, and doing so after the Court granted Plaintiffs' motion for preliminary injunction.

d. Stating that Plaintiffs and/or their lawsuit are the reason for any purported changes in QU's operation of its cross country program, thus fostering animosity toward Plaintiffs among both male and female runners.

e. Pressuring the coaches of women's teams to increase their squad sizes more than necessary and blaming Plaintiffs and/or their law suit for it.

f. Pressuring the coaches of men's teams to decrease their squad sizes more than necessary and blaming Plaintiffs and/or their law suit for it.

g. Creating a hostile environment toward Plaintiffs.

h. Creating a climate of fear within the athletic department to deter others from complaining about discrimination or from testifying for Plaintiffs.

i. Reducing the support previously provided to the volleyball program.

j. Denying the volleyball team access to facilities during the nontraditional portion of their season.

k. Failing to provide the volleyball team with adequate sports information, medical, training, and administrative support and resources, and failing to publicize or promote the academic, community, or athletic achievements of the volleyball team this season.

l. Ordering Coach Sparks to vacate her office after she requested copies of QU's EADA reports (even though the men's coaches whose teams were eliminated were not ejected).

151. QU took these adverse actions in response to and because Plaintiffs opposed QU's sex discrimination and filed this action. QU took these adverse actions against Plaintiffs with the intent to harm, retaliate, and intentionally discriminate against them. Such actions constitute retaliation and intentional discrimination in violation of Title IX.

152. On information and belief, QU's retaliatory animosity towards Plaintiffs is so great

that QU has derided Plaintiffs' complaints in the press and within QU and its athletic department, making their employment and education environment more hostile.

153. On information and belief, QU's retaliatory animosity towards Plaintiffs is so great that QU has blamed them for QU's purported elimination of men's sports teams, knowingly creating a hostile environment among their peers.

154. On information and belief, QU's retaliatory animosity towards Plaintiffs is so great that QU is willing to spend significant amounts of money to prevent reinstatement of the volleyball program. For example, QU is spending significantly larger amounts of money to start a purported competitive cheer team than it provided to women's volleyball --- even though QU purported to eliminate volleyball because of financial hardship. This new cheer team now uses the Burt Kahn court – even though QU also purported to eliminate volleyball because it wanted to turn the Burt Kahn court into an alumni facility.

155. On information and belief, QU did not start a cheer program in order to provide genuine athletic participation opportunities for female students but instead to make sure that it could eliminate the women's volleyball program in retaliation for their exposure of QU's ongoing sex discrimination.

156. On information and belief, QU's large infusion of resources into its competitive cheer program did not take place until after Plaintiffs filed this action. QU's animosity is so intense and illogical that QU apparently is willing to spend more money to eliminate the women's volleyball team than it would cost to keep it.

157. On information and belief, Defendant is willing to look for a more difficult or more costly way to comply with Title IX now just to spite the volleyball team and to keep it from being reinstated. There is no logical explanation for this behavior other than retaliatory animosity,

especially when no one asked QU to start calling its cheer program a “sport” and no female is being offered a new athletic opportunity.

158. Plaintiffs have been harmed and will continue to be harmed by Defendant’s retaliatory actions. Such harm includes reduced benefits, a less quality program, a compromised future for the program, and a hostile work and education environment. The harm also includes the potential loss of athletic participation opportunities and athletic financial assistance. It also includes emotional distress, pain, humiliation anxiety, and other damages to be proven at trial. Accordingly, they are entitled to the relief requested herein.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully pray that this Court:

A. Certify the first, second, and third claims as a class action on behalf of all present, prospective, and future female students at Defendant who are harmed by and want to end QU’s sex discrimination in (1) the allocation of athletic participation opportunities; (2) the allocation of athletic financial assistance; and (3) the allocation of benefits provided to varsity athletes. Plaintiffs further request that these claims be certified on behalf of females who are deterred from enrolling at QU because of the sex discrimination in QU’s athletic program, including its failure to offer the varsity sports in which they want to participate.

B. Enter an order declaring that Defendant has engaged in a past and continuing pattern and practice of discrimination against female students on the basis of sex in (1) the allocation of athletic participation opportunities; (2) the allocation of athletic financial assistance; and (3) the allocation of benefits provided to varsity athletes in violation of Title IX and the regulations promulgated thereunder.

C. Issue an injunction that restrains Defendant from continuing to discriminate against female students on the basis of sex; restrains Defendant from eliminating the women's varsity volleyball program (or any women's athletic opportunities); requires Defendant to provide females with an equal opportunity to participate in varsity intercollegiate athletics by sponsoring additional women's sports based upon the interests and abilities of Defendant's present, prospective, and future students; requires Defendant to provide female athletes with equal access to athletic financial assistance; and requires Defendant to provide female athletes with equal athletic benefits and resources.

D. Issue an injunction that restrains Defendant from eliminating Coach Sparks' employment and requires Defendant to continue her employment as head volleyball coach at QU but without the discrimination in the terms, conditions, and resources of that employment.

E. Award the Student Plaintiffs compensatory damages and other monetary relief as permitted by law.

F. Award Coach Sparks back pay and benefits, compensatory damages, and other monetary relief as permitted by law.

G. Award Plaintiffs their reasonable attorneys' fees and expenses.

H. Order such other and further relief as the Court deems appropriate.

PLAINTIFFS DEMAND A TRIAL BY JURY OF ALL ISSUES TRIABLE TO A JURY.

Dated: December 9, 2009

Respectfully submitted by:

/s/ Jonathan B. Orleans

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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2009, a copy of the foregoing First Amended Class Action Complaint (with Exhibits 1-5) was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

_____/s/_____
Jonathan B. Orleans (ct05440)

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