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,	CIVIL ACTION NO:
Plaintiffs,	3:09-CV-00621 (SRU)
against	
QUINNIPIAC UNIVERSITY,	
Defendant.	

QUINNIPIAC UNIVERSITY'S REPLY IN SUPPORT OF ITS PROPOSED COMPLIANCE PLAN

Plaintiffs' response to Quinnipiac University's compliance plan consists largely of arguments already explored at trial and ruled upon in the Court's July 21, 2010 Memorandum Decision. Plaintiffs raise two new issues in their response: (i) speculation about the University's future enrollment statistics and (ii) questions about the two NCAA women's sports the University is in the process of adding. Both Plaintiffs' speculation about enrollment and their concerns about new NCAA sports are meritless. Moreover, Plaintiffs have not offered any legitimate reason why discovery or a hearing is necessary at this point. The University should be allowed to move forward with implementing its Compliance Plan, which not only continues the volleyball team for two years, but also creates significant new opportunities for female athletes at Quinnipiac.

1. **University Enrollment**

The University's Compliance Plan recognizes that "enrollment numbers may fluctuate," and states that "Dr. Thompson will monitor and adjust roster numbers based on an ongoing assessment of the coaches' needs and undergraduate enrollment statistics, with the goal of ensuring that each student athlete receives a genuine athletic participation opportunity." (Plan at 6) Indeed, OCR recognizes there will be "natural fluctuations in enrollment," and that it would be unreasonable to expect an institution to add athletic opportunities in light of such shifts in the undergraduate makeup. (OCR 1996 Clarification) Quinnipiac sets an enrollment target each year for the freshman class, but does not break that number down by gender. The University does not project the gender make-up of its future undergraduate population, notwithstanding Plaintiffs' conjecture concerning the popularity of its various programs of study. Moreover, the relative proportion of men and women in these programs can vary in future years, and the

University is constantly evaluating the addition of new programs and/or enlarging existing programs, which would make any such future projection unreliable, in any event.

The final enrollment statistics for fall 2010 are now available, and show a slightly *lower* percentage of women than Quinnipiac had projected at the time it submitted its Compliance Plan. There are 5862 full-time undergraduate students, consisting of 3705 females (63.20%) and 2157 males (36.80%). (At the time Quinnipiac submitted its Compliance Plan, the projection was for 63.25% of the undergraduate population to be female and 36.75% male.)

As explained in the Compliance Plan, if there are shifts in the undergraduate enrollment numbers, the University will make changes to its athletics program to maintain compliance with Title IX. Furthermore, even if the percentage of women enrolled in 2011-12 were to increase, as Plaintiffs speculate, the Compliance Plan presently provides that in 2011-12 the percentage of female athletes (64.48%) will be some 1.28 percent greater than the current percentage of female undergraduate students (63.20%).

2. **Golf**

Since receiving the Court's July 21, 2010 decision, the University has made extensive efforts to add athletic opportunities for women, including the addition of a varsity women's golf team for the 2010-11 season. (Indeed, Quinnipiac submitted its Compliance Plan over a month before it was due to expedite this process.) Women's golf is an NCAA championship sport. Although the Court's decision only instructed the University that it must maintain its women's varsity volleyball team for the 2010-11 season, and plainly did not anticipate other changes in athletic teams or rosters that were in place for this year, the University decided that starting a women's golf team that would begin competition in Spring 2011 was feasible and desirable in meeting the goal of Title IX compliance. Starting a golf team in 2010-11 is not only realistic, but it will also help the University in its efforts to sponsor an even more competitive team in the 2011-12 season, helping the team recruit athletes to join the team next year. As described in the Declaration of John McDonald, Quinnipiac's Director of Athletics and Recreation ("McDonald Dec." ¶¶ 3-4), plans for the golf team are now largely in place.

The University recently hired a head coach for the women's varsity golf team. The coach (who previously served as the men's golf coach) soon will begin recruiting athletes for the 2011-12 season. The golf team will practice at the New Haven Country Club and Laurel View Country Club. The team will have an operating budget of approximately $70,000, it will have two full scholarships to distribute, and the team will have a head coach and a part-time assistant coach (which is what Quinnipiac's men's golf team received before the sport was eliminated in 2009). (McDonald Dec. ¶¶ 3-4)

The University already has 22 students who have expressed interest in participating on the women's golf team, some of whom played on their high school golf teams (including one woman who was the captain of her high school team). Almost all of the women have played golf before and are also athletes who have participated in other sports. (McDonald Dec. ¶ 5, Ex. A).

3. **Rugby**

Despite the fact that Rugby is recognized as an NCAA emerging sport, Plaintiffs argue that "varsity women's rugby essentially does not exist at the college level." (Response at 10) This notion runs contrary to the very idea of NCAA emerging sports, which often have few varsity programs as the sport grows and expands. OCR presumes that a sport can be counted under Title IX when it meets the organizational requirements of the NCAA, including the requirements set out for emerging sports. (9/17/08 Dear Colleague Letter) Indeed, in assessing whether Competitive Cheer constitutes a varsity sport at Quinnipiac, the Court noted that "surely in the event that the NCAA recognizes the activity as an emerging sport," it would be "acknowledged as a bona fide sporting activity by academic institutions, the public, and the law." (Decision at 71) Thus, there is a presumption that rugby is a varsity sport that counts as such for Title IX. There is no logical basis for disregarding that presumption before Quinnipiac has an opportunity to organize a team and begin competition as a varsity team next year.

Plaintiffs' argument that rugby should not count as a varsity sport because of a lack of varsity competition (and competition at the Division I level) ignores the fundamental nature and purpose of an NCAA-recognized emerging sport. Plaintiffs' own expert witness, Dr. Athena Yiamouyiannis, testified that it is common for varsity teams in emerging sports (including rugby) to compete against club teams. Indeed, she confirmed that unless varsity teams in emerging sports compete against club teams, it would be difficult, if not impossible, for schools to expand athletic opportunities for women into new sports. (Yiamouyiannis Dep. at 178-79) Moreover, while rugby may not be widely played at the high school level, there are already approximately 11,000 women collegiate club rugby players. (http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/ncaa/about+the+ncaa/diversity+and+inclusion/gender+equity+and+title+ix/es+-+rugby) Indeed, women's rugby is a popular sport at numerous colleges in the northeast, with over 50 club teams in the northeast region alone (at schools in the NEC, such as Central Connecticut State University and Bryant University, and other nearby schools, such as Yale University, University of Connecticut, Connecticut College, Southern Connecticut State University, University of Hartford, and Western Connecticut State University). There are also four other varsity programs at NCAA schools, three of which are located in the northeast: Eastern Illinois University, West Chester University (located in eastern Pennsylvania), Bowdoin College (located in Maine) and Norwich University (located in Vermont). (McDonald Dec. ¶ 11)

Quinnipiac is currently in the process of conducting a nation-wide search for a full-time women's rugby head coach. The University posted the position, is in the process of interviewing qualified candidates, and expects to hire one shortly. Upon hire, the coach will begin recruiting immediately for the 2011-12 season. The team will practice and play at the Alumni House and Field, which is located behind the University's baseball field. The team will have an operating budget of approximately $100,000, it will have six scholarships to distribute, and the team will have a full-time head coach and a part-time assistant coach. (McDonald Dec. ¶¶ 6-8) The budget is similar to that for women's lacrosse, which has a similar number of athletes.

Contrary to Plaintiffs' prediction that Quinnipiac will not be able to find qualified athletes interested in playing rugby, the University already has 51 women (who themselves are class-members in this action)[1] who have expressed interest in joining the team. (McDonald Dec. ¶ 9, Ex. B) Several of these women have played rugby before, and all of them are athletes with experience in other sports, such as soccer, basketball, softball and track. Furthermore, rugby is a sport where technical skills developed in other

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[1] Although the named Plaintiffs are all volleyball players, they have an obligation to represent the interests of all class members, including the 73 students who have expressed interest, to date, in participating on the proposed rugby and golf teams.

sports (including soccer, softball, basketball and track) are easily transferrable to rugby techniques, presenting rich opportunities to recruit cross-over athletes from other sports. (McDonald Dec. ¶ 10, Ex. C) Quinnipiac will also recruit athletes during the 2010-11 academic year and offer scholarships to draw in talented female rugby athletes for the team's inaugural 2011-12 season.

4. **Issues the Court has Already Ruled Upon**

Plaintiffs raise many of the same arguments that were addressed at trial, upon which the Court has already ruled. Plaintiffs cannot re-litigate their claims under the pretext of challenging Quinnipiac's Compliance Plan.

Squad Sizes

Plaintiffs argue that the squad sizes for some of the women's teams are "suspiciously large," misrepresenting trial testimony by noting that there was "abundant" testimony indicating that "QU fails to provide [genuine Division I varsity athletic participation] opportunities for its 'extra' athletes." (Response at 3) The squad sizes of women's teams largely remained the same in 2010-11, with the exception of several sports where adjustments were made at the coaches' requests.[2] (Tr. at 346-47, Martin Tr. at 107, 116, Ex. BF).

Plaintiffs were unable to show that any female athletes were "extra" athletes who did not receive genuine Division I varsity athletic participation opportunities. The Court held, "the plaintiffs have . . . not proven how the discrepancies between the sizes of

[2] As discussed below, the squad sizes for the women's cross country team and indoor and outdoor track and field teams increased at the request of head coach Carolyn Martin. The women's lacrosse team squad increased by one and the women's volleyball team squad increased by two athletes. The women's soccer roster decreased from 27 to 25, and the women's softball roster decreased from 20 to 19.

Quinnipiac's teams and average national and conference teams – discrepancies that result in approximately one to two fewer male athletes, and one to two more female athletes, per team – result in the deprivation of genuine participation opportunities for women. At most, the plaintiffs have demonstrated that Quinnipiac has deliberately set its roster targets to achieve Title IX compliance, which OCR permits the University to do." (Decision at 87).

Plaintiffs pose various questions about whether the University has hired more coaches for its female teams, whether it has hired more training and conditioning personnel for these teams, whether it has increased the teams' recruiting budgets and whether it has increased scholarship budgets for women's teams.[3] But, Plaintiffs failed to produce any evidence at trial that the University treated women's teams any different from men's teams in terms of coaching, training and conditioning, recruiting budgets or scholarship budgets.

Women's Cross Country Teams

Plaintiffs argue that the women's cross country team is too large. Again, this was an issue that was addressed at trial. Plaintiffs ask in their brief, "what can be the legitimate basis for expanding the women's cross country team to 24 runners . . . .?" (Response at 4) But, Carolyn Martin, the team's head coach, answered that question in her testimony. She explained that she requested 24 athletes and considered that to be an

[3] Particularly disappointing is Plaintiffs' completely baseless rhetoric, epitomized by their inquiry as to whether Quinnipiac increased teams' recruiting budgets "so that the coaches can recruit Division I athletes, and not trawl the dining halls for unqualified walk-ons to meet their mandatory roster floors." (Response at 3) Quinnipiac is disheartened that after it made extensive efforts to create a good faith Compliance Plan, Plaintiffs continue to rehash old unproven allegations, valuing rhetorical flourish over substantive evaluation of Quinnipiac's Plan.

appropriate number of athletes to make Quinnipiac's team more competitive. (Martin Tr. at 108-09) Coach Martin explained that many women's cross country teams have around 24 athletes, that having this many athletes gives the team a competitive advantage in terms of displacing runners on other teams, and that having a team this size helps the team remain competitive when athletes suffer injuries. (*Id.*) Indeed, the Court acknowledged that the increase in the size of the women's cross country team for 2010-11 to 24 athletes "was in response to a request made by Martin for more female runners." (Decision at 43)

In fact, the cross-country team has begun competition and there is no need to speculate about the size of the roster. The team currently has 24 athletes. (McDonald Dec. ¶ 12, Ex. D) The results from the team's first three competitions show that 22 of the 24 athletes on the team have competed in at least two of the three meets; the only two athletes who have not competed are scholarship athletes who are injured. (McDonald Dec. ¶ 12, Ex. E) Thus, there is no basis to find at this time that 24 is not an appropriate number of athletes for the women's cross country team or that these athletes will not be able to receive genuine athletic opportunities.

Women's Indoor and Outdoor Track and Field Teams

Plaintiffs continue arguing, as they did at trial, that indoor and outdoor track and field athletes "should not be counted more than once" simply because "[r]unning 400 meters indoors is not substantively different from running 400 outdoors." (Response at 5) The Court has already rejected this argument. (Decision at 72)

Plaintiffs also repeat their argument that the University "must recruit female athletes to fill the different types of positions in the sport of track & field." (Response at

7) There is no such requirement under Title IX, and the Court acknowledged that according to the unrebutted testimony of Martin and track and field expert Samuel Seemes, the only two witnesses who discussed track and field at trial, "it is not uncommon for schools to enter athletes only in track events." (Decision at 23)

Although not required to have sprinters or jumpers on a track and field team, Coach Martin also testified that she recruited a number of sprinters and jumpers (who are not members of the cross country team) to join the indoor and outdoor track and field teams in 2010-11. (Martin Tr. at 120-21) Plaintiffs question how the University will recruit enough women to fill its indoor and outdoor track and field teams, but Coach Martin explained in her testimony that she requested an increase in the size of the teams precisely because she already had recruited enough athletes for these teams to require these additional roster spots. (Martin Tr. at 116-121; Ex BF)

Plaintiffs also argue that the women's indoor and outdoor track and field teams do not receive equal benefits to men's teams. Title IX does not require universities to provide any particular level of benefits to athletic teams, but only to provide benefits on a nondiscriminatory basis. Plaintiffs had an opportunity to prove this point at trial, but failed to introduce any evidence that the University provides its women's indoor and outdoor track and field athletes with fewer benefits than male athletes. For example, Plaintiffs argue that "[s]o long as QU schedules its men's teams to compete in scored competitions, it must do the same for women's track – not indoor track scrimmages without scoring." (Response at 7) Martin and Seemes both testified that non-scoring track meets are common, and the Court recognized that "[m]any track meets are not scored at the team level, but only provide individual competitors the chance to excel in their respective events." (Decision at 22-23)

The Court's ruling that eleven athletes should not have been counted on the women's indoor and outdoor track and field teams was based on the Court's assessment that these "injured players remained on the indoor and outdoor track teams because of a rule imposed by their coach." (Decision at 81) The University's Compliance Plan addresses the Court's concern by publicizing the University's policy that no student is required to participate in one sport in order to participate in a different sport. (McDonald Dec. ¶ 13)

Finally, the Court's decision implicitly rejects any argument that the Court should find *in advance* that the cross country and track and field rosters are too large to provide genuine athletic participation opportunities to all of the additional runners, by its holding that "those determinations can only be made with a factual record documenting what actually occurred during those teams' seasons." (Decision at 93)

5. **A University Chooses Which Sports it Sponsors**

Plaintiffs argue that the University should be required to continue supporting women's varsity volleyball for the indefinite future. In its Compliance Plan, the University agreed to continue volleyball through 2011-2012, which is more than what the Court required the University to do, stating that "Quinnipiac is not obligated to continue sponsoring the team beyond [the 2010-11 season]." (Decision at 94) Plaintiffs' argument regarding the popularity of volleyball among high school students has no bearing on whether the University must continue offering this sport under Title IX. The reasons why the University is choosing to sponsor particular sports are also irrelevant to the question of whether such sports satisfy the school's requirements under Title IX.

The law is clear that schools have flexibility in deciding what teams they will offer. *See Cohen v. Brown*, 991 F.2d 888 (1st Cir. 1993) ("Title IX does not require institutions to fund any particular number or type of athletic opportunities – only that they provide those opportunities in a nondiscriminatory fashion if they wish to receive federal funds."). The Court acknowledged, "[t]he University is entitled to determine its own method for achieving statutory compliance; the OCR regulations are clear that, although educational institutions must offer equal athletic participation opportunities to both sexes, Title IX gives schools flexibility in deciding for themselves how to best meet that legal obligation. *See, e.g.*, 1996 OCR Letter at 4 ('Ultimately, Title IX provides institutions with flexibility and choice regarding how they will provide nondiscriminatory participation opportunities.')." (Decision at 94) Thus, Plaintiffs' arguments concerning the importance of maintaining the women's volleyball team indefinitely are meritless.

6. **Court Supervision**

Plaintiffs make the broad and unsupported allegation that "QU's athletic program has never complied with Title IX." (Response at 12) Based on this completely groundless claim, Plaintiffs insist that "the Court should retain jurisdiction to oversee QU's ongoing compliance efforts until QU has maintained Title IX compliance for a reasonable number of years." (*Id.*) In fact, the Court has only found that Quinnipiac did not comply with Title IX for one year – 2009-2010. In this year, the Court found there was a 3.62 percent disparity between Quinnipiac's undergraduate female population and the female athletic opportunities, which it described as a "borderline case." (Decision at 89) The Court also found "[t]here is no indication that Quinnipiac is continuing to engage in the manipulation that was the basis for my preliminary injunction ruling." (Decision at 87)

The 3.62 percent disparity can largely be explained by the University's mistaken – but good faith – belief that its Competitive Cheer team would count as a varsity sport. The Court agreed that at some point "in the near future," this sport would likely count as a varsity athletic opportunity under Title IX. (Decision at 71) Given Quinnipiac's continued good faith efforts to comply with Title IX, there is no reason for the Court to retain jurisdiction to oversee the University's compliance for many years into the future, assuming, of course, that Quinnipiac is able to demonstrate that it meets the requirements of its Compliance Plan.

7. **<u>Discovery and Hearing</u>**

There is no need for additional discovery concerning the University's Compliance Plan or a hearing to evaluate the Plan. All of the necessary elements for compliance with Title IX are contained in the Plan. Quinnipiac recognizes that once the Plan is approved, Plaintiffs will be entitled to monitor whether Quinnipiac is complying with its Plan, and expects that the parties can discuss between themselves what information the University would need provide for that purpose. Quinnipiac also expects that the Court may require submission of information at the end of each academic year to demonstrate that Quinnipiac has met the requirements of its Compliance Plan, and that a hearing would be necessary to the extent there is any dispute as to its performance under the Plan. But just as the Court stated with respect to the cross-country and track and field teams, whether all of Quinnipiac teams provide genuine athletic opportunities to the projected number of athletes can only be determined based on a record of "what actually occurred during those teams' seasons." (Decision at 93) Plaintiffs have failed to identify any factual issues as to which discovery and a hearing are necessary to assess, in advance, whether the University's proposed Compliance Plan provides an appropriate framework for achieving Title IX compliance.

CONCLUSION

The Court should approve Quinnipiac's Compliance Plan.

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