IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

STEPHANIE BIEDIGER, KAYLA LAWLER ERIN OVERDEVEST, and KRISTEN CORINALDESI, individually and on behalf of all those similarly situated; LESLEY RIKER on behalf of her minor daughter, L.R., individually and on behalf of all those similarly situated; and ROBIN LAMOTT SPARKS, individually, Plaintiffs, v. QUINNIPIAC UNIVERSITY, Defendant.	CIVIL ACTION NO: 3:09-CV-00621 (SRU) May 7, 2009

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. BACKGROUND

1. Plaintiffs Stephanie Biediger, Kayla Lawler, Erin Overdevest and Kristen Corinaldesi are female student athletes ("Student Plaintiffs") who attend Defendant Quinnipiac University in Hamden, Connecticut ("QU"). They are members of the Defendant's varsity women's volleyball team.

2. Plaintiff L.R. is a minor represented by her mother, Lesley Riker. L.R. is a high school senior who has been accepted to attend QU in September 2009 and has been awarded an athletic scholarship to play on the Defendant's varsity women's volleyball team.

3. Robin Lamott Sparks is the women's varsity volleyball coach at QU and has been so employed since 2007. She also is an adjunct professor in communications at the Defendant university.

4. Defendant QU is a private university which receives federal financial assistance and is subject to Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681-88 ("Title IX").

5. Jack McDonald is the Defendant university's Athletic Director. As such, he is responsible for managing the Athletic Department's personnel, budget, fund-raising and revenue efforts, athletic events and campus athletic facilities. With the assistance of his staff, he also oversees QU's compliance with all applicable rules and regulations of the National Collegiate Athletic Association ("NCAA") and with Title IX.

6. Tracey Flynn is employed by the Defendant university in its Athletic Department and holds the titles of Senior Women's Administrator ("SWA") and Assistant Athletic Director for Compliance. She ensures that the university follows NCAA rules, and oversees the Athletic Department's athletic scholarship budget.

7. On or about March 4, 2009, QU announced that, for budgetary reasons, it would eliminate three varsity sports: women's volleyball, men's golf, and men's outdoor track. Robin Lamott Sparks was informed of this decision on March 4, 2009, and was simultaneously informed that effective June 30, 2009, she would no longer be employed as the women's volleyball coach at QU.

8. Stephanie Biediger, Kayla Lawler, Erin Overdevest and Kristen Corinaldesi have participated in the past as members of QU's varsity women's volleyball team. But for the announced elimination of their team, they planned to continue as varsity volleyball

players. There is enough interest and support from the student body to field a competitive women's varsity volleyball team.

9. L.R. intended to attend QU and play on its women's varsity volleyball team. But for the announced elimination of the team, she planned to compete in women's volleyball throughout her academic career at QU.

10. But for the announced elimination of the women's volleyball team, Coach Sparks planned to continue working at QU as its varsity women's volleyball coach and a faculty member.

11. The Student Plaintiffs and Coach Sparks retained counsel, who sent a letter to the President of QU seeking to discuss the status of the volleyball program at QU.

12. After two weeks without a response from the Defendant, Plaintiffs commenced this action to challenge QU's failure to provide equal athletic opportunities for its female students. Plaintiffs assert that QU has intentionally discriminated against them based upon their sex. On the same date that the Plaintiffs filed suit, Plaintiffs' counsel received a letter from a lawyer for QU, Attorney Janet Judge, in which she represented, *inter alia*, that QU was adding a new women's sport, competitive cheer, with 40 opportunities for women to compete.

13. The Complaint, styled as a class action, consists of one Count asserting a claim under Title IX of the Education Amendments of 1972, 20 U.S.C. sections 1681-88 ("Title IX"), for the violation of Title IX's equal participation requirement.

14. The Plaintiffs also filed a Motion requesting preliminary injunctive relief. Specifically, Plaintiffs seek the immediate reinstatement of women's volleyball and the

reinstatement of Coach Sparks, scheduling of competition and provision of all other benefits normally associated with varsity status at QU.

15. This Court held a hearing on the Motion for Preliminary Injunction on May 11 and 12, 2009.

B. History of Title IX Compliance at QU

16. McDonald and Flynn were both deposed on May 1, 2009, at which time they testified that QU was not in compliance with Title IX's proportional opportunities requirement in academic years 2007-08 and 2008-09. QU has not been compliant with Title IX and is fully aware of its failure in this regard.

17. Using Equity in Athletics Disclosure Act ("EADA") institutional data provided by the Defendant in discovery and/or obtained from the Department of Education Office of Civil Rights, Plaintiffs' Title IX expert witness Dr. Donna Lopiano determined that QU has not been in compliance with Title IX's proportional opportunities provision for the last 15 years.

18. Using student population data for academic year 2008-09 provided by the Defendant, Dr. Lopiano determined that the full-time undergraduate student population at QU for the current academic year is 5,558. Of that population, 2134 (or 38.4%) are male undergraduates and 3424 (or 61.6%) are female undergraduates. She also determined that 212 varsity athletic participation opportunities (or 47.4% of the total) are provided to men, and 235 participation opportunities (or 52.6% of the total) are provided to women.[1]

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1 In making these calculations, Dr. Lopiano used "duplicated counts" – i.e., some track athletes who participated in more than one season of track events (cross country in the Fall, indoor track in the winter, and outdoor track in the Spring) were counted in each season in which they participated. This was true of both men and women.

19. Dr. Lopiano calculated that in the current year the number of athletic participation opportunities for women required to achieve proportionality (holding constant the number of opportunities for men) would have been 340; thus QU faces a gap in participation opportunities for women of 105. Dr. Lopiano opined that QU did not satisfy Title IX's proportionality test in the current year, a fact conceded by QU's Athletic Director.

20. Using projected student population data and projected athletic team squad sizes for academic year 2009-10 provided by the Defendant, Dr. Lopiano determined that the full-time undergraduate student population at QU for the next academic year is expected to be _____. Of that population, _____ are expected to be male undergraduates and _____ are expected to be female undergraduates. She also determined that 151 varsity athletic participation opportunities (or 40.2% of the total) will be provided to men, and 225 participation opportunities (or 59.8% of the total) will be provided to women (including the projected 40 opportunities for athletes on the "competitive cheer" team).[2]

21. Dr. Lopiano calculated that QU faces a gap in participation opportunities for women in 2009-10 of 17, *even considering Quinnipiac's proposed "competitive cheer" team as a varsity sport.* Of course, this a sufficient number to support a volleyball team.

22. Although QU added women's varsity ice hockey in 2000, Dr. Lopiano also concluded that QU does not have a "history and continuing practice of program expansion" for female athletes. Thus, in her opinion, QU was in violation of Title IX when it eliminated

2 In making these calculations, Dr. Lopiano used "unduplicated counts" – because although QU will not field a formal men's outdoor track squad in 2009-10, members of the men's cross country and indoor track team will also be able to run in outdoor events in the Spring. Therefore, using duplicated counts would unfairly understate the number of athletic participation opportunities provided to male track athletes, and/or overstate the number of opportunities provided to women.

women's volleyball, an established women's competitive athletic program, in favor of "competitive cheer," a proposed women's athletic program with no demonstrated or expressed interest among the women attending QU or its prospective student body.

23. Dr. Lopiano also predicted that QU would not be found compliant with Title IX with respect to accommodating the interests and abilities of its female students ("prong three"). More particularly, she noted that there was no formal avenue for students to offer information regarding their interests and abilities, and, according to McDonald and Flynn, QU had not surveyed the existing or prospective student body to gauge their interest in competitive cheer.

C. Elimination of the Women's Volleyball Program

24. In early February 2008, University Vice President Val BelMonte notified McDonald that the University faced financial pressures, and directed him to make a 10% cut in the Athletic Department's budget. McDonald proposed a budget which made the requested cuts across the spectrum of sports without eliminating any teams. BelMonte rejected the proposed budget. He informed McDonald that the University wanted to convert the gymnasium which was then being used by the volleyball team to other uses. He directed McDonald to cut the women's volleyball team.

25. Mr. McDonald met with Ms. Flynn and another member of the Athletic Department and informed them of the decision. Flynn advised them that if the university were to eliminate an established women's varsity sport, it would also have to eliminate men's sports teams. They decided to eliminate men's golf and men's outdoor track in order to try to comply with Title IX.

26. Before this process began, McDonald and Flynn were aware that QU was not in compliance with Title IX's substantial proportionality requirements. Accordingly, the University's actions in eliminating women's volleyball in violation of Title IX were intentional.

D. QU's Proposed competitive cheer Program and Roster Management

27. In order to attempt to comply with Title IX's proportionality requirement, the Defendant decided to elevate its cheerleaders to varsity status and rename the squad as a "competitive cheer" team. "Competitive cheer" is an activity which has not been recognized by the NCAA as a competitive sport. Only two other schools, the University of Maryland and Fairmont State, hold out competitive cheer as a varsity women's sport. The OCR has never recognized a competitive cheer team as a varsity sport for purposes of Title IX compliance.

28. Although financial considerations were included in the reasons proffered by the Defendant for eliminating women's volleyball, that proffered reason is unpersuasive. At the time the decision was made to eliminate volleyball, the Defendant had not undertaken a detailed financial assessment of the relative costs of competitive cheer and volleyball, it had not budgeted for recruiting for prospective members of competitive cheer, and had not allotted any athletic scholarships for the new program.

29. Aware that QU was not Title IX compliant, the Defendant determined that QU would achieve Title IX compliance through "roster management." That is, Mr. McDonald and his staff would determine the size of each team's roster. As a result, in a number of cases the roster management program reduced the available number of opportunities for athletes on men's teams and increased the number of opportunities for athletes on women's teams.

30. The Defendant's use of "roster management," however, caused QU's EADA reporting to be a distortion of reality. For example, in 2007-08, the men's baseball, men's lacrosse, men's soccer, men's cross-country, and men's track teams restricted the number of participants reported for the first day of competition. Male competitors were later added back to the roster after the first day of competition. Similarly, roster management caused the women's field hockey, women's soccer, women's softball, women's lacrosse and women's ice hockey teams to inflate the number of participants on the first day of competition, only to have the excess players leave the team after the first competition.

31. Given the lack of documented, expressed student interest in the creation of a women's competitive cheer team, the allotment of 40 positions to this team, the fact that no players have been recruited, the fact that the NCAA has not recognized competitive cheer either as an established or emerging sport, and the fact that no scholarship funds have been set aside, QU's reliance on this proposed team as its means of achieving substantial proportionality is not convincing and does not satisfy Title IX's requirements.

32. Nor does QU's plan to achieve proportionality through the continued use of roster limits comply with Title IX.

33. Testimony elicited at the hearing indicated that, in the past, any female student-athlete who sought to participate in a varsity sport (other than basketball) was permitted to remain on the roster. Similarly, male athletes who caused the roster to exceed the limits were eliminated prior to the first competition and added back later. Accordingly, the Defendant's proposed increases in the roster sizes for competitive cheer and other women's sports would constitute merely paper increases. QU could simply designate the

"addition" of women's competitive opportunities without actually expecting that they be filled.

34. Neither Mr. McDonald nor Ms. Flynn indicated that there would be any female student-athletes who would fill the proffered competitive cheer positions. Nor did they indicate that a recruiting budget or plan for this proposed sport had been set or increased, nor that scholarship funds for this sport had been created.

CONCLUSIONS OF LAW

35. To prevail on a request for preliminary injunctive relief, the Plaintiffs must persuade the Court of the following:

(1) the likelihood of their success on the merits of their case;
(2) the probability of sustaining irreparable harm in the absence of injunctive relief;
(3) a minimal amount of harm to QU if relief is granted; and
(4) that the public interest favors the grant of injunctive relief.

Jackson Dairy, Inc. v. H. P. Hood & Sons, Inc., 596 F.2d 70, 72 (2d Cir.1979); *Spencer Trask Software & Info. Servs. LLC v. RPost Int'l Ltd.*, 190 F.Supp.2d 577, 580 (S.D.N.Y. 2002), *National Abortion Federation v. Ashcroft*, 287 F.Supp.2d 525 (S.D.N.Y. 2003).

A. LIKELIHOOD OF SUCCESS

36. The Plaintiffs have set forth claims of intentional discrimination under Title IX.

37. QU is a private university which receives federal funding. Accordingly, it is subject to the dictates of Title IX (20 C.F.R. §1681, *et seq.*, 34 C.F.R. Part 106).

38. Title IX prohibits discrimination on the basis of sex by educational institutions that receive federal financial assistance. In particular, Title IX provides that "[n]o 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. Section 1681(a)(2000).

39. The regulations enacted to implement Title IX provide that "[n]o 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 no recipient shall provide any such athletics separately on such basis." 34 C.F.R. Section 106.41(a).

40. The regulations further provide that "[a] recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes." 34 C.F.R. Section 106.41(c) (italics added).

41. "Equal opportunity" is defined by the following program factors:

(1) whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes;

(2) the provision of equipment and supplies;

(3) the scheduling of games and practice times;

(4) travel and per diem allowances;

(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 facilities and services;

(9) provision of housing and dining facilities and services; and

(10) publicity.

34 C.F.R. 106.41(c).

42. For purposes of Plaintiffs' request for preliminary injunctive relief, the Court will focus on whether QU provides substantially equal competitive sports opportunities to male and female student athletes.

43. The Policy Interpretations published by the Department of Education's Office of Civil Rights ("OCR") outline a three part test to determine compliance in the area of accommodation:

> (1) whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollment (the "substantial proportionality prong");
>
> (2) where the members of one sex have been and are underrepresented among intercollegiate athletics, where 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 (the "history of continuing expansion prong"); or
>
> (3) where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as cited above, where it can be demonstrated that the interests and abilities of the members of the sex have been fully and effectively accommodated by the present program.

Barrett v. West Chester Univ. Of Pa., Civ. No. 3-4978, 2003 WL 22803477 at * 5 (E.D.Pa. Nov. 12, 2003), *citing* 44 Fed.Reg. 71, 418 (Dec. 11, 1979).

44. The Department of Education's regulations implementing Title IX are entitled to deference under *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984). "The degree of deference is particularly high in Title IX cases because Congress explicitly delegated to the agency the task of prescribing standards for athletic programs under Title IX." *Cohen v. Brown Univ.*, 991 F.2d 888, 895 (1st Cir.1993).

45. Plaintiffs have the burden of demonstrating that QU has not complied with the substantial proportionality prong. If the Plaintiffs are successful in this regard, then the burden shifts to QU to demonstrate that its proffered competitive cheer program will remedy the non-compliance under either the second or third prongs. *Cohen v. Brown Univ.*, 991 F.2d 888, 901 (1st Cir. 1993); *Roberts v. Colo. State Bd. of Agric.*, 998 F.2d 824, 828 (10th Cir. 1993); *Horner v. Ky. High Sch. Athletic Ass'n.*, 43 F.3d 265, 275 (6th Cir. 1994).

Prong One

46. The Court finds, and the Defendant does not contest, that QU was not in Title IX compliance when it decided to eliminate the women's volleyball program. After careful consideration, the Court further finds that the Defendant's proffered remedy through the promised implementation of competitive cheer is not sufficient to establish Defendant's compliance with Title IX.

47. As QU's McDonald and Flynn concede, QU did not and is not providing substantial proportionality in athletic opportunities to men and women.

48. Rather than argue that it is currently compliant with the substantial proportionality prong, QU urges that it will become compliant, that it has plans to be compliant in the 2009-10 academic year through the continued use of roster management. and the addition of 40 opportunities for women to participate in competitive cheer.

49. The testimony of Plaintiffs' expert, Dr. Donna Lopiano, establishes without equivocation and to a mathematical certainty that QU has not been in Title IX compliance

for the last 15 years, QU still would not be providing substantially equal athletic opportunities.

50. The Defendant submits that as a matter of law, its promise to provide substantially proportional women's athletic participation opportunities in the 2009-10 academic year is sufficient to trigger the protections of Title IX. The Court rejects this argument.

51. Reading Title IX as a whole, the Court is not persuaded that a promise of future compliance is sufficient. For example, prong three analysis requires that the Defendant has "demonstrated that the interests and abilities of the members of the sex have been fully and effectively accommodated by the *present* program."

52. Prong One deals with present proportional sports opportunities. Prong Two creates a safe harbor for institutions which may not provide proportional opportunities at present, but have a demonstrated history of expanding opportunities. Finally, Prong Three creates a haven for institutions whose underrepresented students (and the pool of high school students from which the institution recruits) simply are not interested in expanding competitive opportunities. The regulations create no refuge from liability for non-compliant institutions, such as the Defendant university, which promise to comply with Title IX in the future. Presumably Congress could have created such a refuge, but declined to do so. The established and recognized havens for non-compliant institutions having been expressly delineated by Title IX and its interpretations, this Court declines to fashion a new refuge out of thin air.

53. The Court finds, therefore, that, as a matter of law, a promise to provide substantial proportionality in the future is not the same as having established

proportionality as expressly required by Title IX. *Choike v. Slippery Rock University*, 2006 WL 2060576, *7 (W.D.Pa.).

54. QU's plan to add competitive cheer and continue to employ roster management is simply unpersuasive at this stage. As QU has admitted, use of roster management to achieve substantial proportionality has failed to date. Moreover, there is substantial evidence from the testimony of Ms. Flynn that to the extent the Defendant has employed roster management, it has resulted in a distortion of the actual number of male and female participants reported for Title IX compliance under the EADA.

55. Similarly, the Defendant's plan to add competitive cheer, even if successful, will not add enough competitive female opportunities to bring the Defendant into Title IX compliance. The Court further finds that the competitive cheer program is not sufficiently established, planned or funded to provide meaningful opportunities for women's athletic competition in 2009-10.

56. Further, the proposed 40 person roster size proposed for competitive cheer appears to be purely artificial. Other than anecdotal claims of interest in competitive cheer among unidentified female students, the Defendant has never undertaken to determine the true level of interest or athletic ability among its present or prospective female student body for competitive cheer. As set forth above, the Defendant's practice of roster management has resulted in the undercounting of male athletic participation and the overcounting of actual female athletic participation. Under the present circumstances, therefore, the Defendant's promised 40-person competitive cheer program is suspect.

57. QU's proposal to elevate competitive cheer to varsity status in order to satisfy Title IX is also suspect. The NCAA does not recognize competitive cheer as a sport for

Title IX purposes. QU did not consult with any students or members of the existing cheerleading squad before deciding to sponsor the team. There are other NCAA and NorthEast Conference recognized sports such as women's golf, swimming and bowling which QU could have added to expand women's participation with little controversy. For example, according to Coach Sparks and Dr. Lopiano, nearby Cheshire High School has a highly competitive women's swimming team from whose ranks the Defendant could recruit and build a team.

58. As of the date of the hearing, and certainly at the time the fateful decision was made, no scholarships had been funded, no recruitment had taken place and no players had been placed on the competitive cheer roster.

59. In short, QU's plans to achieve substantial proportionality through roster management, the addition of competitive chee,r and the elimination of men's golf and men's outdoor track are simply too speculative at this juncture to satisfy Title IX.

Prong Two

60. Nor can QU satisfy the second prong of Title IX compliance -- that it has a history and continuing practice of program expansion for women's varsity teams. QU has not added a women's varsity team since 2000 when it added women's ice hockey, despite having full knowledge that it was in violation of Title IX.

61. QU's nearly decade-long period of failing to expand women's participation opportunities is too long a hiatus to permit a finding of continued expansion. In *Cohen I*, for example, the court found that, "evidence has shown that Brown does not have a continuing practice of program expansion for women athletes, even though it can point to impressive

growth in the 1970s." *Cohen I*, 809 F.Supp. at 991. *See also Barrett*, 2003 WL 22803477 at *7 (decade long failure to expand opportunities for women found insufficient to constitute continuing expansion for women athletes).

62. Here, the Defendant is rapidly approaching a decade of failure to expand opportunities punctuated with the elimination of an established women's varsity team, rather than its addition. The Defendant will find no refuge in prong two.

Prong Three

63. There may be instances where a school cannot satisfy the first or second prongs of Title IX simply because its female students are not interested in athletic programs. Thus, Title IX allows a school to satisfy Title IX under prong three if it can demonstrate that it is fully and effectively accommodating the interests of its female students.

64. The Defendant fails to satisfy Prong Three where, as here, it has eliminated women's varsity volleyball, an established sports program which has a well-documented and demonstrated interest among women student athletes. The demonstrated abilities of the women's volleyball team are not seriously in dispute inasmuch as QU has recruited the Plaintiff student athletes to play.

65. Neither has the Defendant University proven that its decision to add the proposed new athletic opportunity was in response to a an unmet demand among women student athletes for an opportunity to participate in competitive cheer. The Defendant has not surveyed its incoming female students nor has it surveyed its present student body. In short, there is no evidence to support such a conclusion.

66. In contrast, the present interests and abilities of the Plaintiff Student athletes to participate in varsity women's volleyball have been thoroughly documented by the Declarations of Plaintiffs and their testimony, and by the Defendant University's own actions in establishing the program in the first place.

67. QU is not fully and effectively accommodating the present interests and abilities of its female students. To the extent that members of the Plaintiff class of student athletes will continue to attend QU and will be denied the opportunity to play varsity women's volleyball, the Defendant will continue to be outside of the protections of Prong Three. The Defendant finds no refuge in Prong Three.

68. The Court, therefore, concludes that the Plaintiffs have demonstrated a likelihood of success on the merits of their claims.

B. IRREPARABLE HARM

69. Plaintiffs have demonstrated a likelihood of irreparable harm if the preliminary injunction is not granted. Irreparable harm is often presumed in cases involving the enforcement of civil rights. *See, e.g., Able v. United States*, 847 F. Supp. 1038, 1043 (E.D.N.Y. 1994) ("[P]possible violation of constitutional rights [under Fifth and First Amendments] constitutes irreparable harm."); *Vietnamese Fishermen's Ass'n v. Knights of the Ku Klux Klan*, 543 F. Supp. 198, 218 (S.D. Tex. 1982) ("Victims of discrimination suffer irreparable injury, regardless of pecuniary damage."); *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1424 (11th Cir. 1984) (housing discrimination "almost always results in irreparable injury").

70. To paraphrase the court in *Favia v. Indiana University of Pa.*, 812 F.Supp. 578, 583 (W.D.Pa.1993), by cutting the women's volleyball team, QU has denied the Student Plaintiffs the benefits accorded to women athletes who compete interscholastically: they develop skill, self-confidence, learn team cohesion and sense of accomplishment, increase their physical and mental well-being, and develop a lifelong healthy attitude. The consequential harm to the Student Plaintiffs from their lost opportunities is irreparable.

C. HARM TO QU

71. The Court finds unpersuasive QU's arguments that it would suffer substantial harm if injunctive relief is granted.

72. In so finding, the Court does not mean to minimize the Defendant's valid concern of judicial interference with its independence in deciding how to allocate its limited financial resources.

73. "Title IX does not purport to override financial necessity. Yet, the pruning of athletic budgets cannot take place solely in comptroller's offices, isolated from the legislative and regulatory imperatives that Title IX imposes." *Cohen II*, 991 F.2d at 905 (citations omitted).

74. Here, QU did precisely that. Knowing that it was out of Title IX compliance, it nevertheless eliminated an established women's varsity sports team with demonstrated female student interest and ability.

75. At this juncture, QU has not established that its harm will outweigh the irreparable harm to the Plaintiffs if QU is required to maintain the volleyball program for the

2009-10 academic year. Any harm to the Defendant is minimal as compared to the harm Student Plaintiffs would suffer if injunctive relief is denied.

D. PUBLIC INTEREST

76. Promoting compliance with Title IX serves the public interest. *Cohen v. Brown University*, 809 F.Supp. 978, (D.R.I. 1992) (stating that "the public interest will be served by vindicating a legal interest that Congress has determined to be an important one"); *Favia v. Indiana University of Pennsylvania*, 812 F.Supp. 578, at 585 (W.D.Pa.,1993) ("The public has a strong interest in prevention of any violation of constitutional rights.").

77. The Court finds that the public interest is best served by ensuring the Defendant's compliance with Title IX.

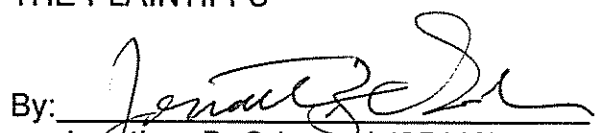
78. **ORDER OF COURT**

AND NOW, this ___ day of May, 2009, after careful consideration, and for the reasons set forth above, it is Ordered that the Plaintiffs' Motion for Preliminary Injunction (Docket No. __) is **GRANTED** as follows:

QU is preliminarily enjoined from eliminating the women's varsity volleyball program for the 2009-10 academic year. Coach Sparks' employment contract shall be renewed for the year. QU shall promptly reinstate the volleyball program, and provide the team with funding, staffing, scholarships, facilities, training, competitive opportunities, and all other benefits commensurate with their status as a Quinnipiac University varsity ntercollegiate athletic team.

Respectfully submitted:

THE PLAINTIFFS

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2009, a copy of the foregoing Plaintiffs' Proposed Findings of Fact and Conclusions of Law 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.

Dated: May 19, 2009

Jonathan B. Orleans (ct05440)

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