

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.)
September 17, 2009

REPORT OF PARTIES' PLANNING MEETING

Date Complaint Filed: April 16, 2009

Date Complaint Served: April 16, 2009

Date of Defendant's Appearance: April 20, 2009

Pursuant to Fed. R. Civ. P 26(f) and D. Conn. L. Civ. R. 26(f), a conference was commenced on August 7, 2009 and continued on August 19, August 27, and thereafter. The participants were:

Jonathan B. Orleans and Alex V. Hernandez for the plaintiffs: and

Edward A. Brill, Susan D. Friedfel, Mary A. Gambardella, and Jonathan Bardavid for the defendant.

I. Certification

Undersigned counsel certify that, after consultation with their clients, they have discussed the nature and basis of the parties' claims and defenses and any possibilities for achieving a prompt settlement or other resolution of the case and, in consultation with their clients, have developed the following proposed case management plan. Counsel further certify that they have forwarded a copy of this report to their clients.

II. Jurisdiction

A. Subject Matter Jurisdiction.

This Court has subject matter jurisdiction pursuant to Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, *et seq.*, and the regulations adopted pursuant thereto, 34 C.F.R. § 106 (collectively "Title IX").

B. Personal Jurisdiction

Personal jurisdiction is not contested.

III. Brief Description of Case

A. Claims of Plaintiffs:

Early in March 2009, Quinnipiac University ("QU") announced that it was eliminating its women's volleyball team. The plaintiffs, four present and future members of the team and their coach, Robin Sparks, filed this class action lawsuit pursuant to Title IX. They immediately sought a preliminary injunction to prevent Quinnipiac from eliminating the team pending a trial on the merits of plaintiffs' claim that the University failed to comply with Title IX's requirement that it provide equal competitive opportunities for its female athletes. A hearing was held on May 11, 12 and 13, 2009. On May 22, 2009 the Court granted plaintiffs' motion for preliminary injunction.

The student-athlete plaintiffs contend that Quinnipiac historically has not complied with Title IX, and that its plan to eliminate women's volleyball as a varsity sport and add competitive cheer will not bring the university into compliance with Title IX. Coach Sparks claims that the loss of her employment that would follow from elimination of the volleyball team would violate Title IX. Plaintiffs seek a permanent injunction, damages, and attorney fees.

B. Defenses and Claims of Defendant:

Defendant denies all material allegations of the plaintiffs' complaint, and specifically asserts the following:

- a. Defendant is in compliance with Title IX. Furthermore, since the preliminary injunction hearing, Defendant has taken significant steps to ensure continued compliance. First, responsibility for roster control has been shifted to the Senior Vice President for Academic and Student Affairs, and an interactive process was created to obtain input and agreement from the coaches regarding roster size. Second, an additional men's sport was eliminated to ensure parity.
- b. This action cannot be maintained as a class action pursuant to applicable law and procedural rules, and Plaintiffs are not representative of any legally cognizable "class";
- c. Defendant has historically complied with Title IX, but more important, contends that historical compliance or non-compliance is not probative of the issues presented in this case; and
- d. Plaintiffs cannot demonstrate that they have suffered monetary or other losses and are not entitled to permanent injunctive relief.

IV. Statement of Undisputed Facts

Counsel certify that they have made a good faith attempt to determine whether there are any material facts that are not in dispute. The parties state that the following material facts are undisputed:

- 1. Stephanie Biediger, Kristen Corinaldesi, and Kayla Lawler are all Quinnipiac University ("Quinnipiac" or the "University") undergraduates and current members of the Quinnipiac volleyball team.
- 2. Erin Overdevest is a Quinnipiac graduate student who has a year of varsity athletic eligibility remaining and intends to play volleyball for Quinnipiac during academic year 2009-10.
- 3. Lesley Riker is the mother of a student-athlete who graduated from high school in the Spring of 2009, and who committed herself to attend Quinnipiac starting academic year 2009-10, and agreed to participate in the volleyball team. Mrs. Riker's daughter, plaintiff L.R., will substitute for her mother as a plaintiff, as L.R. has reached the age of majority and can continue as a plaintiff on her own.

4. Robin Sparks is the volleyball coach at Quinnipiac University.
5. During academic years 2007-08 and 2008-09, Sparks was a party to a yearly contract with the University to provide services as a volleyball coach. Sparks also taught one class during academic year 2008-09.
6. Quinnipiac University is a private institution of higher education that offers both graduate and undergraduate educational programs.
7. Quinnipiac receives federal funds and is subject to the requirements of Title IX.
8. Quinnipiac is a member of the National Collegiate Athletic Association (“NCAA”) and competes athletically in Division I.
9. Quinnipiac is also a member of the Northeast Conference (“NEC”), which offers intercollegiate competition in a variety of sports.
10. On or about March 4, 2009, the University announced that it would eliminate the women’s volleyball team, the men’s outdoor track team, and the men’s golf team. The men’s indoor track team and the men’s golf team were eliminated effective June 30, 2009. On May 26, 2009, the University further announced that the men’s outdoor track team would be eliminated; that elimination also became effective June 30, 2009.

V. Case Management Plan

- A. *Standing Order on Scheduling in Civil Cases.* The parties request modification of the deadlines in the Standing Order on Scheduling in Civil Cases as set forth below.
- B. *Scheduling Conference with the Court.* The parties believe that an in-person pretrial conference before entry of a scheduling order pursuant to Fed. R. Civ. P 16(b) is desirable so that the parties can present their respective positions with respect to the schedule for discovery and trial.
- C. *Early Settlement Conference.*
 1. The parties certify that they have already attempted to settle the case before continuing significant discovery or motion practice. An unsuccessful settlement conference was held with the Hon.

William I. Garfinkel, United States Magistrate Judge on July 27, 2009. The parties agree that additional attempts at early settlement would not be productive.

2. The parties do not request an additional early settlement conference.
3. Not applicable.
4. The parties do not request a referral for alternative dispute resolution pursuant to D. Conn. L. Civ. R. 16.

E. Joinder of Parties and Amendment of Pleadings.

Plaintiffs' Position

1. Plaintiffs should be allowed until December 1, 2009 to file motions to join additional parties and/or to amend the complaint prior to class certification. Plaintiffs should be allowed until January 15, 2010 to file a motion for class certification. If the court denies class certification, plaintiffs should be allowed until 30 days after the date of such ruling to join additional individual plaintiffs.
2. Defendant should be allowed until January 1, 2009 to file motions to join additional parties and to file a response to any amended complaint.

Explanation: Plaintiffs expect to add claims and parties. Counsel require the time proposed to conduct the necessary investigation, prepare an amended complaint.

Plaintiffs deny defendant's contention that their goal is to prolong the litigation; indeed, plaintiffs hoped to resolve the case through mediation during the summer. Plaintiffs disagree with defendant's contention that the preliminary injunction "creates a substantial burden on the University," particularly since (a) the University has had a volleyball program for years, and (b) it is difficult to see how the University would be in compliance with Title IX without the athletic participation opportunities provided by the volleyball program.

Defendant's Position

1. Plaintiffs should be allowed until September 18, 2009 to file motions to join additional parties and/or to amend the complaint prior to class certification. Plaintiffs should be allowed until October 19, 2009 to file a motion for class certification.
2. Defendant should be allowed until September 18, 2009 to file motions to join additional parties. Defendants shall respond to any amended complaint within the time period prescribed by the Federal Rules.

Explanation:

In light of the preliminary injunction in effect, the litigation should be expedited so that a final resolution can be reached as quickly as possible, and, ideally, early enough to allow the University to make decisions relating to the 2010-11 academic year. The preliminary injunction creates a substantial burden on the University both in terms of the cost associated with maintaining the volleyball team and the inability to repurpose the facility used by the team. Furthermore, the University intends to prove that it will remain in compliance when the volleyball team is eliminated. Plaintiffs' proposed schedule indicates that their goal is to prolong the litigation as much as possible in order to keep the preliminary injunction in place for as long as possible.

This lawsuit has been pending since April 2009; thus, plaintiffs' counsel has already had five months to conduct an investigation and draft an amended complaint. Paragraph 2(b) of the Standing Order on Scheduling in Civil Cases provides that motions relating to joinder of parties and class certification should be made "within 60 days after the filing of the complaint." Plaintiffs have provided no legitimate justification for their need for an additional two-and-a-half months to file such motions.

F. Discovery.

1. The parties have already conducted certain discovery in preparation for the hearing on Plaintiffs' request for a preliminary injunction. The parties disagree on what additional discovery is needed. Plaintiffs contend that the discovery previously conducted was hurried and incomplete, and that many issues remain to be resolved with respect to

discovery objections. Plaintiffs contend that in order to prepare for trial on the merits, discovery or additional discovery will be needed on the following subjects:

- Quinnipiac's history of compliance or noncompliance with Title IX, including the numbers of participation opportunities provided to women and men, and the facilities, scholarships, financial and other support provided and proposed for women's and men's teams;
- Quinnipiac's methodologies for counting athletic participation opportunities, and how such methodologies compare to those used at other institutions;
- the history of Quinnipiac's athletic program, including any history of program expansion for women;
- the interest of current and prospective Quinnipiac students and area high school students in participating in sports that Quinnipiac currently does not offer;
- Quinnipiac's plans to eliminate its volleyball team and the rationale for that decision;
- Quinnipiac's plans to convert the Burt Kahn gym facility to non-athletic uses;
- the feasibility and cost of providing alternative facilities for volleyball practice and competition;
- the legitimacy of competitive cheer as a varsity intercollegiate sport at Quinnipiac;
- Quinnipiac's policies and practices concerning roster management; and
- the participation of Quinnipiac varsity athletes in competitive events

Defendant disputes that the above-referenced matters are within the proper scope of discovery in this action. Consequently, Defendant contends that the following are the only appropriate, remaining subjects for discovery:

- a. Quinnipiac's current roster management policies, practices, and roster numbers;
- b. Plaintiffs' damages claims;
- c. Plaintiffs' claims of irreparable harm;
- d. Quinnipiac's competitive cheer team activities and participant numbers; and
- e. Quinnipiac's elimination of men's and women's teams for academic years 2008-09 and 2009-10.

Discovery Schedule – Plaintiffs' Position

2. All discovery, including depositions of expert witnesses pursuant to Fed. R. Civ. P. 26(b)(4), will be commenced immediately, and completed by October 1, 2010.
3. Discovery will not be conducted in phases.
4. Not applicable.
5. The parties anticipate that the plaintiffs will require a total of 10 depositions of fact witnesses and that the defendant will require a total of 8 depositions of fact witnesses. All parties reserve their rights to take additional depositions. The depositions of fact witnesses may commence as early as September 1, 2009 and be completed by June 1, 2010.
6. The plaintiffs may request permission to serve more than 25 interrogatories.
7. Plaintiffs intend to call expert witnesses at trial. Plaintiffs will designate all trial experts and provide opposing counsel with reports from retained experts pursuant to Fed. R. Civ. P 26(a)(2) by March 1, 2010. Depositions of any such experts will be completed by April 15, 2010. To the extent plaintiffs wish to call rebuttal expert witnesses and trial, plaintiffs will designate such experts and

provide opposing counsel with their reports by September 1, 2010. Depositions of such rebuttal experts will be completed by October 1, 2010.

8. Defendant intends to call expert witnesses at trial. Defendant will designate all trial experts and provide opposing counsel with reports from retained experts pursuant to Fed. R. Civ. P 26(a)(2) by June 1, 2010. Depositions of such experts will be completed by a date not later than September 1, 2010.
9. A damages analysis will be provided by any party who has a claim or counterclaim for damages by March 1, 2010.

Explanation of Plaintiffs' Position: Plaintiffs believe that in view of the volume of discovery that must be conducted in this matter, the importance of the issues raised by the case, and Quinnipiac's prior conduct, it is entirely unrealistic and inappropriate to attempt to complete discovery by the end of this year, as defendant proposes. Among other things, it will be impossible for the Court to fairly evaluate defendant's renewed claim of compliance with Title IX before a full year of athletic activity and competition has passed, including the championship seasons for the "spring" sports about which serious questions have been raised, such as lacrosse, softball, women's outdoor track, and cheer. Moreover, it will take time to obtain and explore expert opinions on both sides concerning such matters as the viability of cheer as a varsity sport, the appropriate counting of participation opportunities in track, and the impact of "roster management" on participation opportunities.

The schedule proposed by plaintiffs allows a reasonable amount of time to conduct discovery, narrow the issues through motion practice if possible, and conduct a merits trial in time for the Court to render a decision well in advance of the 2011-12 academic year. On plaintiffs' proposed timetable, the case would proceed from filing to conclusion in a total of approximately two years.

Discovery Schedule – Defendant's Position

2. All discovery, including depositions of expert witnesses pursuant to Fed. R. Civ. P. 26(b)(4), will be commenced immediately, and completed by December 22, 2009.
3. Discovery will not be conducted in phases. Defendant anticipates filing appropriate motions for protective order in the event Plaintiffs seek discovery duplicative of that discovery already conducted prior

to the hearing on their request for preliminary injunction. Further, Defendant contends that it will seek re-affirmation by the Court of its rulings during this early discovery phase after submission by the parties' of their respective discovery disputes.

4. Not applicable.
5. The parties will seek leave of Court if they anticipate requiring more than ten depositions of fact witnesses. The depositions of fact witnesses may commence as early as September 1, 2009 and be completed by October 30, 2009.
6. The parties will seek leave of Court if they intend to serve more than 25 interrogatories.
7. Plaintiffs intend to call expert witnesses at trial. Plaintiffs will designate all trial experts and provide opposing counsel with reports from retained experts pursuant to Fed. R. Civ. P 26(a)(2) by November 16, 2009. Depositions of any such experts will be completed by November 30, 2009. Plaintiffs must seek leave of Court to designate rebuttal expert witnesses.
8. Defendant intends to call expert witnesses at trial. Defendant will designate all trial experts and provide opposing counsel with reports from retained experts pursuant to Fed. R. Civ. P 26(a)(2) by December 7, 2009. Depositions of such experts will be completed by December 22, 2009.
9. A damages analysis will be provided by any party who has a claim or counterclaim for damages by October 1, 2009.

Explanation of Defendant's Position:

Defendant disputes Plaintiffs' contentions with regard to the volume of discovery that is necessary in this matter, as noted above. The parties have already conducted substantial discovery in connection with the preliminary injunction motion. Although there are some additional issues to be addressed, they are not so extensive as to require more than a year of discovery, as Plaintiffs propose. In fact, the discovery should be fairly limited, and there is no reason why it cannot be completed by the end of this year. Expedited discovery is particularly important in this case because of the preliminary injunction. Plaintiffs' claim that discovery cannot be completed until a full year of athletic competition has passed is unpersuasive for two reasons. First, Plaintiffs have alleged that the University's plan to eliminate the womens' volleyball team effective June 30, 2009 violated Title IX; there is no need to wait more than 18 months after the complaint was filed to determine whether the law was violated or to monitor the

University's ongoing compliance with Title IX. Second, even if it were necessary to wait until the "spring" sports have begun their regular season play, that still does not justify Plaintiffs' proposal to complete discovery by October 1, 2010. By setting a discovery deadline after the beginning of the 2010-11 academic year, the Plaintiffs are transparently attempting to ensure that the preliminary injunction remains in effect for another year, assuming it is not vacated before then.

10. [Jointly submitted] Undersigned counsel have discussed the disclosure and preservation of electronically stored information, including, but not limited to, the form in which such data shall be produced, search terms to be applied in connection with the retrieval and production of such information, the location and format of electronically stored information, appropriate steps to preserve electronically stored information, and the allocation of costs of assembling and producing such information. While the parties have discussed the disclosure and preservation of electronically stored information, they have not yet agreed on the extent to which any electronic search and retrieval process may be required in this case. All parties have agreed to preserve all electronically stored information that may be relevant to this case, and counsel will have further discussions concerning discovery of such information.
11. [Jointly submitted] Undersigned counsel have discussed discovery procedures that minimize the risk of waiver of privilege or work-product protection, including procedures for asserting privilege claims after production. The parties agree to be governed by Fed.R.Civ.P. 26(b)(5)(B), Federal Rules of Civil Procedure.

G. Dispositive Motions. Plaintiffs propose that dispositive motions will be filed on or before November 1, 2010. Defendant proposes that dispositive motions will be filed on or before February 1, 2010.

H. Joint Trial Memorandum. The joint trial memorandum required by the Standing Order on Trial Memoranda in Civil Cases will be filed by not later than 30 days after the Court rules on dispositive motions.

VI. Trial Readiness

The case will be ready for trial within 60 days after the Court rules on any dispositive motions, or within 60 days from the close of all discovery, whichever is later.

As officers of the Court, undersigned counsel agree to cooperate with each other and the Court to promote the just, speedy and inexpensive determination of this action.

Plaintiffs

By /s/

Date: September 17, 2009

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Defendant

By /s/

Date: September 17, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2009, a copy of foregoing **Rule 26(f) Report of Parties Planning Meeting** 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
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