

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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STEPHANIE BIEDIGER, KAYLA LAWLER,	:	
ERIN OVERDEVEST, KRISTEN	:	CIVIL ACTION NO:
CORINALDESI, and LOGAN RIKER,	:	
individually and on behalf of all those	:	3:09-CV-00621 (SRU)
similarly situated; and	:	
ROBIN LAMOTT SPARKS, individually,	:	
	:	
Plaintiffs,	:	December 22, 2011
	:	
against	:	
	:	
QUINNIPIAC UNIVERSITY,	:	
	:	
Defendant.	:	
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DEFENDANT'S NOTICE OF MOTION TO LIFT INJUNCTION

PLEASE TAKE NOTICE that, upon the annexed Memorandum of Law in Support of Defendant's Motion to Lift Injunction and Declaration of Mark A. Thompson, PhD, Defendant hereby moves this Court for an Order lifting its July 22, 2010 injunction and declaring that the University is in compliance with Title IX.

Dated: December 22, 2011

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MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT'S MOTION TO LIFT INJUNCTION

Quinnipiac University requests that the Court lift its July 22, 2010 injunction and declare that the University is in compliance with Title IX. In granting the injunction, which specifically prohibits Quinnipiac from eliminating the women's volleyball team, the Court held that "Quinnipiac is not obligated to continue sponsoring the [volleyball] team beyond [the 2010-11 season] . . . so long as any decision to eliminate women's volleyball is accompanied by other changes that will bring the University into compliance with Title IX." (7/21/10 Decision at 94) Quinnipiac made such changes and is complying with Title IX's requirement that the University provide substantially proportionate athletic participation opportunities.

Quinnipiac made the following changes to comply with Title IX:

- (1) Quinnipiac added a varsity women's golf team in 2010-11.
- (2) Quinnipiac added a varsity women's rugby team in 2011-12.
- (3) Quinnipiac communicated to all athletes and coaches, including all members of the women's cross country team, women's indoor track and field team and women's outdoor track and field team, that no athlete is required to participate on one team to participate on any other team.
- (4) Quinnipiac's acrobatics and tumbling team¹ now satisfies the factors set forth in the Court's decision (*e.g.*, the team only competes against collegiate varsity teams, the team competes under one standardized set of rules, the team participates in a progressive post-season championship, and the coach conducts off-campus recruiting), such that athletes on this team now count as participants under Title IX.

¹ The acrobatics and tumbling team was formerly known as the competitive cheer team.

As a result of these changes, Quinnipiac complies with Title IX's participation requirements. Thus, Quinnipiac requests the Court lift its injunction.

ARGUMENT

I. Applicable Legal Standard

The Court expressly envisioned that it would modify its injunction when Quinnipiac satisfied Title IX, stating that the injunction shall remain in force "pending further court order" and that Quinnipiac was only required to keep the volleyball team through the 2010-11 season.² (Decision at 94; Injunction) In such a case, it is appropriate to lift an injunction "once the specific results intended . . . had been achieved." *Corenco Corp. v. Schiavone & Sons, Inc.*, 488 F.2d 207, 215 (2d Cir. 1973); see *Sierra Club v. Mason*, 365 F. Supp. 47, 49 (D. Conn. 1973) (where there are changed circumstances that satisfy the court's concern in issuing the injunction, the injunction "ought to be dissolved since it is no longer equitable that the judgment should have prospective application"). Quinnipiac has made significant changes to its athletics program, including adding new women's sports. The University is now in compliance with Title IX and the injunction should be lifted.

II. Quinnipiac Provides Substantially Proportionate Athletic Participation Opportunities

A. *Quinnipiac's Roster Numbers*

With the addition of a women's golf team in 2010-11, the addition of a women's rugby team in 2011-12, and counting the acrobatics and tumbling team, Quinnipiac has a total of 483 varsity athletes in 2011-12, of whom 314 are female (65.01%) and 169 are

² The Court's September 28, 2010 Conference Memorandum instructed that "Quinnipiac may move to lift the injunction or for an order declaring that the University is in compliance with Title IX," and that this would begin the process of the Court evaluating whether to lift the injunction.

male (34.99%).³ (Thompson Declaration ¶ 2) In 2011-12, there are 3,735 female undergraduates (62.37%) and 2,253 male undergraduates (37.63%). (*Id.* ¶ 3) Thus, female athletes are overrepresented by 2.64%. Plainly, as summarized in the chart below, for 2011-12, Quinnipiac is complying with Title IX.⁴

	Female	Male
2011-12 Varsity Athletes	65.01%	34.99%
2011-12 Undergraduate Population	62.37%	37.63%
Difference	+2.64%	-2.64%

B. *Women's Golf Team*

Quinnipiac began a varsity women's golf team in 2010-11. (Thompson Declaration ¶ 6) Golf is a recognized NCAA sport. Thus, it is entitled to a presumption in favor of counting as a sport for purposes of Title IX. (Decision at 57) Quinnipiac employs a women's golf coach; the coach conducts off-campus recruiting for the team;

³ Participation numbers are based on the number of athletes on each team as of the first date of competition. Participation numbers for the acrobatics and tumbling team and outdoor track and field teams are the teams' approved squad sizes because those teams have not yet had their first dates of competition. The participation numbers include four athletes who receive athletic scholarships from Quinnipiac but in no other way participate on a team. (Thompson Declaration Ex. A) In the event the Court determines these athletes do not count for purposes of Title IX, there would be 313 female athletes (65.34%) and 166 male athletes (34.66%).

⁴ Notwithstanding the University's limited ability to make changes in its athletic program in 2010-11 following the Court's July 21, 2010 decision, Quinnipiac provided substantially proportional athletic opportunities in 2010-11. Even without counting acrobatics and tumbling, Quinnipiac had 264 female athletes (61.54%) and 165 male athletes (38.46%), and the undergraduate population was comprised of 3,700 women (63.15%) and 2,159 men (36.85%). (Thompson Declaration ¶¶ 4 & 5) This represents a 1.61% difference between the percentage of female athletes and the percentage of female undergraduate students. The Court noted that courts have held "a disparity within two percentage points is proof that an educational institution falls within the substantial proportionality safe harbor." (Decision at 90) Nevertheless, the University determined it was most prudent to wait an additional year before asking the Court to lift its injunction.

the University provides scholarships to aid in recruiting athletes; the team competes against other collegiate varsity teams; the team practices for competitions; and, the University provides athletes on the team with the myriad of other benefits that come with being a varsity athlete at the University (*e.g.*, power hours, medical assistance, training, community service). (Thompson Declaration ¶ 7) Accordingly, the athletes on the women's golf team count for purposes of Title IX.

C. *Women's Rugby Team*

Rugby is an NCAA emerging sport. The Court recognized that NCAA emerging sport status entitles a sport to a presumption of counting under Title IX. (Decision at 57, 71) Quinnipiac hired a coach and created a women's rugby team in the 2010-11 academic year so the team could begin practicing and competing in scrimmages against other collegiate teams, in preparation for establishing a varsity team in 2011-12. (Thompson Declaration ¶ 9) Quinnipiac awarded scholarships to recruit talented rugby athletes for the 2011-12 academic year. (*Id.* ¶ 10) The rugby team competes against other collegiate varsity and club teams, practices for competitions and provides athletes with all of the benefits of being on a Quinnipiac varsity athletic team. (*Id.*) Although there are currently only five varsity rugby teams in the NCAA, Quinnipiac competed in a significant number of matches against these varsity teams and had other matches against well-established collegiate club teams that provide formidable competition. (*Id.* ¶ 11) Thus, Quinnipiac's varsity women's rugby athletes count as participants for purposes of Title IX for 2011-12.

D. *Women's Cross Country, Indoor Track and Field and Outdoor Track and Field*

In the Court's July 21, 2010 decision, it discounted eleven track and field participants. The Court found the "principal reason" to doubt that all athletes on these three teams receive genuine participation opportunities was the "requirement that cross-country runners compete on the indoor and outdoor track teams." (Decision at 82-83) The University has subsequently made clear to coaches and athletes, including athletes on the women's cross country and indoor and outdoor track and field teams, that there is no requirement that they participate on one of these teams to participate on another team.⁵ (Thompson Declaration ¶ 12) Therefore, athletes on the varsity women's cross country team, indoor track and field team and outdoor track and field team count under Title IX for each sport in which they participate.

E. *Acrobatics and Tumbling*

As the Court recognized in its Decision, there was "little doubt that at some point in the near future – once competitive cheer is better organized and defined . . . competitive cheer will be acknowledged as a bona fide sporting activity by academic institutions, the public, and the law." (Decision at 71) That point surely has arrived.

The Court had three principal issues with the team, each of which the University has addressed. First, the Court found "the Quinnipiac regular season was inconsistent in terms of the rules governing the team's competitions and the types and quality of its opponents." (Decision at 68) The team now competes exclusively under the well-

⁵ Indeed, no such requirement had ever been communicated to the athletes. Nevertheless, Quinnipiac took affirmative steps to make it clear to the athletes that no such requirement exists.

established rules created by the NCATA.⁶ (Thompson Declaration ¶ 13) The team competes exclusively against collegiate varsity teams that are members of the NCATA. (*Id.* at ¶ 15) Second, the Court found “the Quinnipiac post-season fell short of what would be expected of any other varsity team.” (Decision at 68) Quinnipiac’s team now participates in a progressive championship under NCATA rules. (Thompson Declaration ¶ 16) Finally, the Court found that the coach did not engage in off-campus recruitment. (Decision at 68) The coach now conducts off-campus recruiting and recruited off-campus for the 2011-12 season. (Thompson Declaration ¶ 17) These changes cure all of the significant deficiencies the Court found with the team in its decision. Thus, the athletes on the acrobatics and tumbling team count as participants under Title IX.

CONCLUSION

Quinnipiac has allowed the volleyball team to compete past the required 2010-11 season to ensure that it was on the firmest possible footing before asking the Court to lift its injunction. Quinnipiac is now confident that it is in full compliance with Title IX. The Court ordered there would be 120 days for discovery on the motion to lift the injunction, after which there will be a hearing on Quinnipiac’s motion. Therefore, Quinnipiac proposes that discovery end on April 30, 2012, at which point all Quinnipiac teams will have had their first date of competition, and most teams will have completed

⁶ The National Competitive Stunt and Tumbling Association (“NCSTA”) – the governing body for competitive cheer at the time the Court issued its decision – is now called the National Collegiate Acrobatics and Tumbling Association (“NCATA”). The NCATA has by-laws and enforcement mechanisms for ensuring teams follow the rules set forth by the NCATA. Furthermore, the NCATA has partnered with USA Gymnastics such that all NCATA meets are sanctioned by USA Gymnastics. (Thompson Declaration ¶ 14)

their seasons of competition.⁷ Quinnipiac requests the Court set hearing dates as expeditiously as possible thereafter.

Dated: December 22, 2011

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⁷ The women's outdoor track and field team begins its competitions latest in the year. The first date of competition for the women's outdoor track and field team is March 30, 2012, and by April 30 the team is scheduled to have competed in seven meets, which completes the regular season competition.

which have not yet completed their first date of competition. The numbers for these two teams are the approved roster numbers.

3. The undergraduate population in 2011-12 was comprised of 3,735 women (62.37%) and 2,253 men (37.63%).

4. In 2010-11, without counting acrobatics and tumbling athletes, Quinnipiac had 264 female athletes (61.54%) and 165 male athletes (38.46%).

5. The undergraduate population in 2010-11 was comprised of 3,700 women (63.15%) and 2,159 men (36.85%).

Women's Golf Team

6. Quinnipiac added a varsity women's golf team that began competing in the 2010-11 academic year.

7. Quinnipiac employs a women's golf coach; the golf coach conducts off-campus recruiting for the team; the University provides scholarships to aid in recruiting golf athletes; the golf team competes against other collegiate varsity teams; the golf team practices for competitions; and, the University provides athletes on the golf team with the many benefits that come with being a varsity athlete at the University (*e.g.*, power hours, medical assistance, training, community service).

Women's Rugby Team

8. Quinnipiac added a varsity women's rugby team that began competing in the 2011-12 academic year.

9. Quinnipiac hired a rugby coach and created a women's rugby team in the 2010-11 academic year, so the team could begin practicing and competing in scrimmages against other collegiate teams as preparation for competition as a varsity team in 2011-12.

10. The University provided scholarships to aid in recruiting rugby athletes for the 2011-12 academic year; the rugby team competes against other collegiate varsity and club teams; the rugby team practices for competitions; and, the University provides athletes on the rugby team with the many benefits that come with being a varsity athlete at the University (*e.g.*, power hours, medical assistance, training, community service).

11. Although there are currently only five varsity rugby teams in the NCAA, Quinnipiac competed in a significant number of matches against these varsity teams and had other matches against well-established club teams that provide formidable competition.

Women's Track and Field Teams

12. On September 24, 2010, Quinnipiac notified its coaches and all student athletes, including the women's cross country, indoor track and field and outdoor track and field teams, in writing of its policy that no student is required to participate in one sport in order to participate in a different sport. Quinnipiac reminded all coaches of this policy in its 2011-12 Athletics & Recreation Staff Policy Handbook.

Acrobatics and Tumbling

13. During 2011-12, the A&T team will compete exclusively under the well-established rules created by the National Collegiate Acrobatics and Tumbling Association ("NCATA").

14. The NCATA has by-laws and enforcement mechanisms for ensuring teams follow the rules set forth by the NCATA. Furthermore, the NCATA has partnered with USA Gymnastics such that all NCATA meets are sanctioned by USA Gymnastics.

15. The A&T team competes exclusively against collegiate varsity teams that are members of the NCATA.

16. Quinnipiac's team participates in a progressive championship under NCATA rules.

17. Mary Ann Powers, the coach of Quinnipiac's A&T team, conducted off-campus recruiting for the 2011-12 season.


MARK A. THOMPSON

12/20/11
DATE

EXHIBIT A**2011-12 Athletic Participation***

	Male Participants	Female Participants
Basketball	18	15
Baseball	31	
Field Hockey		22
Soccer	25	24
Tennis	10	11
Lacrosse	44	30
Cross Country	13	24
Ice Hockey	28	27
Indoor Track and Field		33
Outdoor Track and Field		35
Softball		16
Volleyball		14
Golf		11
Acrobatics & Tumbling		32
Rugby		20
Total	169 (34.99%)	314 (65.01%)

* These numbers include three athletes on the men's lacrosse team who have exhausted their eligibility under NCAA rules (and therefore do not participate on the team), but are still receiving athletic scholarships from Quinnipiac. These numbers also include one female athlete who receives an athletic scholarship from the ice hockey team, but no longer participates on that team – she is also a member of the women's golf team, and counts as a member of that team as well.