

DEFENDANT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Quinnipiac University is a private, co-educational university located in Hamden, Connecticut.
2. In the 2009-2010 academic year, Quinnipiac had both men's and women's varsity teams. The University had the following 7 men's teams: baseball, basketball, cross country, ice hockey, lacrosse, soccer and tennis. The University had the following 12 women's teams: basketball, competitive cheer, cross country, field hockey, ice hockey, indoor track and field, lacrosse, outdoor track and field, soccer, softball, tennis and volleyball.
3. On July 1, 2009, Dr. Mark Thompson, Senior Vice President for Academic and Student Affairs at Quinnipiac, assumed responsibility for the Athletics Department. In his new role, he began to oversee directly the University's roster management program. (Tr. 357, 263)

Setting Roster Numbers for 2009-2010

4. Even before officially taking charge of the athletics department, in June 2009, Dr. Thompson worked to determine appropriate roster numbers for each of Quinnipiac's varsity teams. Dr. Thompson examined NCAA Division I average roster sizes for the teams Quinnipiac offers as a first step in setting appropriate roster numbers. (Tr. 324)
5. Based on these national averages, and taking into consideration the Court's findings in its preliminary injunction decision, Dr. Thompson created a list of proposed roster numbers. (Ex. 146; Tr. 270)
6. Dr. Thompson met with all coaches in a staff meeting at the beginning of June 2009. He introduced himself and explained his new role and responsibilities. Dr. Thompson distributed the proposed roster number to the coaches at the meeting and explained that he would be meeting with each of them individually and welcomed their comments and suggestions on the proposed roster numbers.
7. After distributing these preliminary roster numbers, Dr. Thompson met with each coach individually to discuss the roster numbers and how the roster management program would be administered. Dr. Thompson had an open door to coaches, and repeatedly asked for their input on whether the numbers he proposed were appropriate. Several coaches expressed concerns to Dr. Thompson regarding their proposed roster numbers. Dr. Thompson was responsive to the coaches' concerns and made adjustments to the roster numbers based on these communications. (Tr. 268 – 269, 271 – 272, 322, 324)
8. On July 22, 2009, Dr. Thompson sent letters to the head coaches with a revised set of proposed roster numbers. The letters asked each coach to

- confirm that the roster number was “a reasonable roster number that represents a genuine opportunity for a Division I experience for each team member and that I have a sufficient budgetary allocation to support this number.” (Ex. BO)
9. After Dr. Thompson distributed these letters, he e-mailed all of the head coaches on July 24, 2009 to urge them to give their input if they had lingering concerns about roster numbers being too large or too small. Dr. Thompson wrote, “Your input and vetting as part of the roster number determination is important. Your input is important because you understand your sport best and any unique issues that should be considered to ensure that we have a roster number for your team that is reasonable and represents a genuine Division I experience for each team member.” (Ex. BX)
 10. Dr. Thompson continued discussing the proposed roster numbers with coaches in July and August 2009 and made numerous adjustments based on coaches’ recommendations. (Exs. BX – CB, CD – CP; Tr. 329 – 337)
 11. For example, in the initial proposed roster numbers distributed at the June 2009 athletics department meeting, the women’s basketball team had a roster number of 15. In July and August 2009, the head coach of the women’s basketball team spoke with Dr. Thompson several times, requesting additional roster spots for her team. Dr. Thompson adjusted the roster in response to the coach’s request, first raising the roster number to 17, and ultimately to 18 to accommodate the unique needs of the women’s basketball team. (Exs. BY – CA; Tr. 330 – 331)
 12. As another example, in June 2009, the women’s ice hockey team began with a proposed roster number of 27. The head coach of the women’s ice hockey team spoke with Dr. Thompson in July 2009. Dr. Thompson adjusted the roster number down to 26 based on this communication, and the head coach confirmed that he could “easily work with 26” as the roster number. (Ex. CB; Tr. 741 – 742))
 13. Dr. Thompson finalized the roster numbers for 2009-2010 in early September 2009. (Ex. 86)
 14. After Dr. Thompson finalized the roster numbers based on the 3-month interactive process with the coaches from the coaches, he monitored the rosters to confirm that the coaches met their roster numbers. (Tr. 324)
 15. In 2009-2010, the coaches understood that roster management was not an option. Dr. Thompson clearly communicated that the roster numbers were not “ceilings” or “floors,” but rather actual approved team sizes that coaches were expected to meet and maintain throughout the year, subject

only to approved additions and/or deletions for legitimate reasons. (Tr. 298 – 299, 324 – 325)

16. In 2009-2010, the coaches all met their respective targets, as is reflected in the 2009-2010 squad lists. (Ex. EL)
17. In the 2009-2010 academic year, on the first date of competition for its various sports, Quinnipiac had 166 male athletes and 274 female athletes, making 37.73% of the University's athletes male and 62.27% female. (Ex. BM)
18. In the 2008-2009 academic year, Quinnipiac had 2,134 male undergraduates and 3,424 female undergraduates, for a total of 5,558 undergraduate students. In the 2009-2010 academic year, Quinnipiac had 2,168 male undergraduates and 3,518 female undergraduates, for a total of 5,686 undergraduate students. The athletic participation numbers and enrollment numbers are shown below (Exs. BM, BN):

	Male	Female	Total
2009-2010 Varsity Athletes (Number)	166	274	440
(Percent)	37.73%	62.27%	100%
2009-2010 Undergraduate Population (Number)	2,168	3,518	5,686
(Percent)	38.13%	61.87%	100%
2008-2009 Undergraduate Population (Number)	2,134	3,424	5,558
(Percent)	38.40%	61.60%	100%

19. In 2009-2010, the percentage of female athletes as of the first date of competition was less than half of one percent higher than the percentage of female undergraduate students at Quinnipiac. (Ex. BM)

Monitoring Additions and Deletions from Teams in 2009-2010

20. After the coaches met their roster targets, Dr. Thompson vigilantly oversaw additions and deletions from teams. Dr. Thompson informed the coaches that, as with any team at any school, there could be certain legitimate additions or deletions from teams. For example, an athlete might quit a team because he needs to focus on his academics, or a team might add a player because it needed someone to fill a position when

another athlete on the team quit or became injured during the course of the season. (Tr. 338)

21. Dr. Thompson also made clear that, moving forward, there would be no roster manipulation of the sort found by this Court in its preliminary injunction decision. Students could not be added or deleted after the first date of competition without a legitimate reason. Now that the roster numbers were carefully set, taking into account the significant input of the coaches, Dr. Thompson demanded that no such manipulation occur. (Tr. 322 – 323)
22. The coaches met Dr. Thompson's demand and did not make any attempt to manipulate their rosters. (Tr. 809)
23. Quinnipiac's coaches received training from an outside expert in Title IX in the fall of 2009, and were fully informed about the theory and practice of roster management. (Tr. 339 – 340)
24. As expected, most teams had some additions or deletions over the course of the year, based on the circumstances of each team and individual athletes. When coaches wanted to make a change, they sought permission to do so, and Dr. Thompson approved changes for legitimate reasons. In doing so, Dr. Thompson applied the same standards for women's and men's teams. (Tr. 339)
25. For example, two women quit the women's field hockey team because of injuries and academics. Given these deletions, Dr. Thompson approved the field hockey coach's request to add an additional athlete to the team who had previously been a member of the women's ice hockey team. (Ex. CQ; Tr. 340)
26. As another example, the men's lacrosse coach requested that he be allowed to add a goalie when one of the team's goalies kept missing practice. Dr. Thompson approved this request after he confirmed that, based on other deletions from the team, the roster would remain the same size. (Ex. CS; Tr. 341)
27. Over the course of the 2009-2010 academic year, the men's lacrosse team added two players to the team (on 1/14/10 and 1/27/10) and three players either quit or were cut from the team (on 1/17/10, 2/7/10 and 4/26/10). The team met its roster target of 41 athletes for the first date of competition, and on the last date of competition the team roster had decreased to 40 athletes. At no point during the men's lacrosse season did the team's roster ever exceed 42 players. (Exs. EL, EN)
28. By the last date of each team's championship season, there were 4 fewer male athletes and 4 fewer female athletes on Quinnipiac's varsity teams. The percentage of male and female athletes on the last date of

competition remained almost identical to the percentages on the first date of competition. (Ex. BM)

29. The breakdown of how many athletes were on each team on the first date of competition and how many athletes were on each team on the last date of each team's competition is shown below (Ex. BM):

SPORT	ATHLETES ON FIRST DATE OF COMPETITION	ATHLETES ON LAST DATE OF COMPETITION IN CHAMPIONSHIP SEASON
Men's Baseball	31	29
Men's Basketball	17	16
Men's Cross Country	13	13
Men's Ice Hockey	30	30
Men's Lacrosse	41	40
Men's Soccer	24	24
Men's Tennis	10	10
Total Male Athletes	166	162
% of Athletes: Men	37.73%	37.50%
Women's Athletes		
Women's Basketball	18	18
Women's Competitive Cheer	30	30
Women's Cross Country	18	18
Women's Field Hockey	24	23
Women's Ice Hockey	26	26
Women's Indoor Track	30	30
Women's Lacrosse	29	27
Women's Outdoor Track	30	29
Women's Soccer	27	28
Women's Softball	20	21
Women's Tennis	10	10
Women's Volleyball	12	10
Total Female Athletes	274	270
% of Athletes: Female	62.27%	62.50%

Quinnipiac's Roster Numbers for the 2010-2011 Academic Year

30. In setting the roster numbers for the 2010-2011 academic year, Dr. Thompson engaged in a similar interactive process with the coaches as he did in 2009-2010. (Tr. 343)
31. Several coaches requested adjustments to their rosters for 2010-2011. Dr. Thompson carefully considered the requests and changed several of the roster numbers based on the reasons offered by coaches. (Exs. DY – EK; Tr. 346 – 350, 353)
32. After consultation with the coaches and adjusting rosters based on coaches' requests, Dr. Thompson set the final roster numbers for 2010-2011, which are summarized below (Ex. BQ):

	Male	Female	Total
2010-2011 Varsity Athletes – With Volleyball			
Number	168	296	464
Percent	36.21%	63.79%	100%
2010-2011 Varsity Athletes – Without Volleyball			
Number	168	282	450
Percent	37.33%	62.67%	100%
2009-2010 Undergraduate Population	38.13%	61.87%	100%

33. Quinnipiac currently projects that the 2010-2011 undergraduate enrollment will be 5900 students, 3712 who will be female and 2188 who will be male. These are preliminary estimates; the actual numbers, which will not be available until September 2010, are likely to vary from these estimates. (Ex. 141)

Quinnipiac Correctly Counts Athletes on its Cross Country, Indoor Track and Field and Outdoor Track and Field Teams

34. Quinnipiac sponsors women's cross-country, women's outdoor track and field and women's indoor track and field teams. (Martin Tr. 4, May 18, 2010)
35. During Academic Year 2009-2010, Quinnipiac had 18 women on the cross-country team, 30 women on the indoor track and field team, and 30 women on the outdoor track and field team, as of the first date of competition in each sport. (Exs. AB, AM, AU; Martin Tr. 15, 59, 82-83)
36. Dr. Thompson set these roster numbers based on conversations with Shawn Green, the team's head coach up until the summer of 2009 when

- Carolyn Martin took over as head coach. Shawn Green had agreed that these numbers were reasonable and reflected genuine participation opportunities for all team members. (Martin Tr. 14 – 15)
37. As of the last date of competition in each sport, the roster numbers were almost the same; cross-country – 18; indoor track and field – 30; outdoor track and field – 29. (Ex. BM)
 38. Quinnipiac provided genuine participation opportunities for all members of the women’s cross-country team, outdoor track and field team and indoor track and field team. (Martin Tr. 15, 59 – 60)
 39. Cross-country, indoor track and field and outdoor track and field are properly treated as separate sports by Quinnipiac for purposes of Title IX. (Tr. 787)
 40. For purposes of determining the number of participants under Title IX, Quinnipiac properly counts athletes who are on multiple teams as participants on each team. (Tr. 786)
 41. The NCAA treats cross-country, indoor track and field and outdoor track and field as three separate and distinct sports. It conducts separate men’s and women’s championships in each sport. Furthermore, each sport counts separately towards fulfilling the NCAA requirements that a school sponsor a minimum number of sports in order to be classified as a Division I, II or III institution. (Ex. BG at 5)
 42. The NCAA manual explicitly states in Rule 14.2.3.3 that “Cross country, indoor track and field, and outdoor track and field shall be considered separate sports.” (Ex. EP)
 43. Cross-country, indoor track and field and outdoor track and field are similarly recognized as separate sports by the National Association of Intercollegiate Athletes (NAIA), the National Junior College Athletic Association (NJCAA), USA Track and Field (which is the governing body for running sports in the United States) and the International Association of Athletic Federation (IAAF) (the international governing body for running sports). (Ex. BG at 5)
 44. The 2009 User’s Guide for The Equity In Athletics Act Web-Based Data Collection, published by the U.S. Department of Education, Office of Post-Secondary Education (“EADA User’s Guide”) provides schools a choice of reporting information for cross-country, indoor track and field and outdoor track and field teams, either separately or consolidated. In either case, the EADA User’s Guide provides that athletes participating in multiple teams are counted as participants on each team. (Ex. 110)

45. There are significant differences among cross-country, indoor track and field and outdoor track and field. (Ex. BG at 5-6)
46. As the Court found in its Preliminary Injunction decision, cross-country is fundamentally separate from either indoor track and field or outdoor track and field. It is run in all weather, outside, through mud, gravel or grass, on track, up and down hills and through woods and open fields, and no two courses are the same. All runners in a cross-country meet run the same course, with the team score determined by the finishing place of the five fastest runners in each team. (P.I. Decision at 32)
47. Unlike cross-country, not all track and field team members compete in the same event, and scoring is the sum of the results of individual and relay events. (P.I. Decision at 32)
48. There are significant differences in the size and radius of indoor versus outdoor tracks (400 meters with a radius of approximately 120 feet is the common size for an outdoor track, compared to 200 meters as the most common size for an indoor track). Indoor tracks are sometimes banked, while outdoor tracks cannot exceed a one percent slope. And, athletes in outdoor track competitions have to deal with the elements, such as wind. (Martin Tr. 30, Ex. BG at 6)
49. Furthermore, there are significant differences in the events offered in outdoor track and field and indoor track and field. For example, the 60-meter dash, 1 mile run, 60 meter hurdles, weight throw, pentathlon and distance medley relay are championship events typically offered in indoor track and field meets but not at outdoor track and field meets. Conversely, the 100 meter dash, the 1500 meter run, 10,000 meter run, 4x100 meter relay, 3000 meter steeplechase, 100 meter hurdles, 400 meter hurdles, hammer throw, javelin throw, discus throw and decathlon are typically offered in outdoor track and field meets but not at indoor meets. (Ex. BG at 6)
50. As a result of the differences in the indoor and outdoor tracks, as well as environmental differences, indoor track and field and outdoor track and field require different athletic skills and competitive techniques. (Ex. BG at 6)
51. There is nothing unusual about the way in which Quinnipiac operates its women's cross-country, indoor track and field and outdoor track and field teams. (Ex. BG at 8-10)
52. Carolyn Martin is the full-time Head Coach of Quinnipiac's men's and women's cross-country and women's indoor track and field and outdoor track and field teams. There are two paid part-time assistant coaches, and volunteer coaches. (Martin Tr. 4, 8 – 9)

53. Quinnipiac maintains separate budgets for men's cross-country, women's cross-country, women's indoor track and field and women's outdoor track and field. (Martin Tr. 90 – 91)
54. Quinnipiac provides a total of 4 scholarships for women on the three running teams, which are divided among women on the teams. Historically, Quinnipiac has focused on supporting distance runners who run both cross-country and track, although one woman currently receiving scholarship money in 2009-10 was primarily a track athlete (specializing in the 800 meter run). (Martin Tr. 89 – 90)

Cross-country

55. NCAA rules provide that a Division I women's cross-country team must have a minimum of five athletes. Quinnipiac meets the requirement, as it had 18 women on the team in 2009-10. (Exs. EP, AB; Martin Tr. 15)
56. NCAA rules provide that a women's Division I cross-country team must compete in a minimum of six contests, including a conference championship. Quinnipiac meets this requirement, as it competed in seven events, including the NEC conference championship in 2009-10. (Exs. EP, AC)
57. Each of the 18 athletes on the cross-country team competed during the season, except for two athletes who were injured the entire season. Both injured athletes received financial aid and thus were properly included as participants for Title IX purposes. (Martin Tr. 24)
58. All of the athletes on the cross-country team regularly participated in practices, received coaching, were supplied with uniforms and equipment, received medical and training room services, and attended team meetings. They received academic support available to all Quinnipiac varsity athletes and participated in other activities, such as "Positive Play", which is community service required of all Quinnipiac varsity athletes. (Injured athletes were required to come to practice and either received physical therapy or treatment in the training room or participated in weight lifting or other training activity to the extent possible.) (Martin Tr. 25 – 27)
59. There is nothing unusual about the number of athletes in Quinnipiac's women's cross-country team. Quinnipiac's roster of 18 was just one above the NCAA Division I average roster size in 2008-09. Moreover, the number of athletes on cross-country teams varies considerably. Women's cross-country teams in the NEC Conference ranged from a low of 7 to as high as 27 in 2008-09. (Martin Tr. 108, Ex. 9)

Indoor Track and Field

60. NCAA rules provide that a Division I women's indoor track and field team must have a minimum of 14 athletes. Quinnipiac meets that requirement, as it had 30 women on its indoor track and field team in 2009-10. (Exs. EP, AM; Martin Tr. 59)
61. NCAA rules provide that a Division I women's indoor track and field team must compete in a minimum of six contests, including a league championship. Quinnipiac meets this requirement. It competed in six indoor track and field meets in 2010, including the NEC championship. (Exs. EP, AH; Martin Tr. 152)
62. Other than the NEC Championship, the indoor track and field meets were "non-scoring meets", in which team scores were not tabulated. These meets count as team competitions for NCAA purposes, and individual athletes' times and performances qualify for post-season competition. Non-scoring meets are a common form of track and field competition. (Ex. BG at 4; Martin Tr. 35-36)
63. Of the 30 women on the first day of competition roster, 26 women competed during the season.¹ Four women did not compete during the season. Two were scholarship athletes who were injured; one was a scholarship athlete who was "red-shirted" as she was studying abroad; and one was a non-scholarship athlete who was injured at the start of the season but who the coach expected to recover and compete during the season. (Martin Tr. 51 – 52)
64. All of the women on the team regularly participated fully as team members throughout the season (except for the one woman who was studying abroad). (Martin Tr. 52)
65. They participated in practices throughout the season. If injured athletes were not able to run, they would spend practice time in the training room receiving physical therapy, treatment or cross-training to keep themselves fit. The team did weight training together as a team, but practice runs were divided into three or four groups depending on the events athletes were training for. For example, athletes training for 200M and 400M races trained separately from those preparing for the mile run or longer distances. (Martin Tr. 52 – 54, 58)
66. All members of the team received coaching, including individual coaching, on a regular basis. (Martin Tr. 54)

¹ Although 31 women were listed on the opening day roster one (Boyer) was not able to compete for medical reasons and should have been deleted from the roster before the first day of competition. (Martin Tr. 62)

67. All members of the team received equipment, including a running shoe allowance, team sweats, warmups, and a team uniform. (Martin Tr. 55)
68. All members of the team received medical and training room services. The head trainer was assigned to the team. (Martin Tr. 55, 56)
69. All members of the team attended regular team meetings (unless excused due to a class conflict). (Martin Tr. 56)
70. All members of the team participated in other activities, such as “Positive Play” (unless excused due to a conflict in their schedules). (Martin Tr. 56)
71. The team travelled together to meets, and all members of the team were treated the same with respect to housing, meals, and other aspects of travel. (Martin Tr. 57)
72. There was no differentiation among the 30 members of the women’s indoor track and field team in any respect, except that not all of the athletes received athletic scholarships and they received different training schedules and coaching depending on the events they were competing in. (Martin Tr. 57)
73. The Quinnipiac women’s indoor track and field team regularly competed in running events from 200 meters up through 5,000 meters and the 4x400, 4x800 and Distance Medley Relay. The team competed in a majority of events at the Northeast Conference (NEC) Championship meet in February 2010, including 9 of the 11 running events. Quinnipiac did not participate in the 6 field events (jumping and throwing). Quinnipiac finished in a tie for 7th place out of 12 teams in the League. (Exs. AJ, AI)
74. There was nothing unusual about the number of Quinnipiac athletes participating in any specific events, or about the number of athletes on the team. (Ex. BG at 9)
75. Quinnipiac properly counted all 30 members of the women’s indoor track and field team as participants for the purposes of Title IX.

Outdoor Track and Field

76. NCAA rules provide that a Division I Women’s Outdoor Track and Field Team must have a minimum of 14 athletes. Quinnipiac meets this requirement. There were 30 women on the team in 2009-10. (Exs. AU, EP; Martin Tr. 82 – 83)
77. NCAA rules provide that a Division I women’s outdoor track and field team must compete in a minimum of six contests (which can include the league championship). Quinnipiac meets this requirement. The team competed

in eight meets, including the Northeast Conference Championship and the New England Championship in 2010. (Exs. EP, AO)

78. Of the 30 women on the roster as of the first date of competition, 24 women competed during the season. Six did not compete. Two (Morelli and Sorell) were scholarship athletes who were out due to injury. Two others (Cristobal, Santandreu) were injured at the start of the season, but were expected by the coach to recover in time to compete during the season. One woman (Kelly) was receiving a scholarship but was “red-shirted” during the season as she was studying abroad. One (Donnelly) left the school on a medical leave and was deleted from the roster. (Martin Tr. 80-82)
79. All of the athletes on Quinnipiac’s women’s outdoor track and field team participated as members of the team throughout the season (except for the one student who was studying abroad and the student who left school). (Martin Tr. 84)
80. They regularly practiced with the team throughout the season. They were divided into groups depending on the nature of event different athletes were training for. (Martin Tr. 85)
81. They all received individual coaching. (Martin Tr. 85)
82. They all received equipment for the outdoor track and field season, including an allowance for running shoes, jackets, equipment bags, t-shirts, and a singlet when they were competing. (Martin Tr. 85)
83. They all received medical and training room services. A trainer was assigned to the team. (Martin Tr. 86)
84. They all attended team meetings (unless they were excused due to a class conflict). (Martin Tr. 86)
85. They all participated in other team activities, such as the Relay for Life and other “Positive Play” community service activities (unless there was a scheduling conflict). (Martin Tr. 86)
86. No distinction was made among members of the team during travel to meets. All members of the team were treated the same. (Martin Tr. 87:6-9)
87. There was no respect in which any member of the team was treated differently than others for any purpose in terms of University support or participation on the team, except that not all members of the teams received athletic scholarships and team members had different training schedules and coaching depending on the events in which they were competing. (Martin Tr. 87)

88. The women's outdoor track and field team competed in most running events from 200 meters up through 10,000 meters, the 4x400 and 4x800 meter relays, the 3000 meter steeplechase, and triple jump. Quinnipiac competed in a majority of the events at the NEC Championship Meet in May 2010, including 10 out of the 13 running events, and 2 out of 8 field events (long jump and triple jump). Quinnipiac finished 7th of 12 teams in the league. (Exs. AR, AP; Martin Tr. 75)
89. There was nothing unusual about the number of women on Quinnipiac's outdoor track and field team or the number of women entered in specific events during the season. (Ex. BG at 9)
90. Quinnipiac properly counted 30 athletes as participants on the outdoor track and field team for purposes of Title IX.

General

91. There was nothing unusual about Quinnipiac's decision not to enter athletes in most field events. It is common for schools to concentrate on running events, or even certain running events (e.g., sprints, middle distance, long distance), and not to compete in most or all field events. Field events require practice facilities and specialized coaching that many schools do not have, or have chosen not to devote resources to supporting. Nothing in NCAA, Northeast Conference, or other rules requires that a school compete in both track events and field events, or in any minimum number or combination of events. (Ex. BG at 9)
92. There is also nothing unusual about the fact that Quinnipiac's cross-country runners also compete on the indoor and outdoor track and field teams. Most schools that sponsor cross-country teams also sponsor track and field teams, and members of the cross-country team commonly also run on the track and field teams. (Ex. BG at 8)
93. Plaintiffs' contention that Quinnipiac does not operate "bona fide" indoor and outdoor track teams, and that the track and field teams are simply an adjunct of the cross-country team, is without merit. As found above, cross-country is a completely different sport from track and field. Furthermore, 40 per cent of the athletes on Quinnipiac's track and field teams (*i.e.*, 12 out of 30) are not on the cross-country team, and the indoor and outdoor track and field teams both compete in a range of running events from the 200 meters up. (Ex. BG at 8-10)
94. Nor is there any basis for plaintiffs' assertion that Quinnipiac's cross-country and track and field teams include "extra athletes" or "sub-varsity athletes". Each of the athletes on the cross-country and track and field teams participated on the teams within the meaning of NCAA and OCR

rules, and is properly counted as a participant for Title IX purposes. (Ex. BG at 10-14)

Roster for 2010-11

95. Coach Martin requested that the roster of the women's cross-country team be increased from 18 to 24 athletes for 2010-11, and that the roster for the indoor and outdoor track and field teams be increased from 30 to 35. (Martin Tr. 107; Ex. BF)
96. Coach Martin asked for this increase based on her successful recruiting results, and an assessment of what she believed would be the proper roster size for each team. No one at the university suggested that she increase the roster size of any team for next year. (Martin Tr. 107, 109, 103)
97. Dr. Mark Thompson questioned Coach Martin to be sure that she had sufficient budget to support the increased roster such that there would be genuine competitive opportunities for all athletes on the team. Coach Martin explained that the increased roster size would result in more competitive runners on the teams, and also allow her to expand into additional events; for example, she has recruited a pure sprinter and a high jumper. (Tr. 347; Martin Tr. 121, 120)
98. Dr. Thompson approved Coach Martin's request and set the roster for 2010-11 at 24 runners for the women's cross-country team, and 35 on both the indoor and outdoor track and field teams. (Ex. BQ)
99. Dr. Thompson also increased the budget for the women's cross country, indoor track and field and outdoor track and field by \$10,000 to be distributed, as needed, among these 3 teams. (Tr. 347)
100. The roster numbers for the 2010-11 women's cross-country and indoor and outdoor track and field teams were set in good faith and based on the reasonable request of Coach Martin for rosters in each sport that will provide a genuine athletic participation opportunity for each member of the team.

Quinnipiac Correctly Counts the Members of its Competitive Cheer Team

101. From 1999 through 2008-09, Quinnipiac University had a sideline cheerleading squad that competed in one or two cheer competitions each year. The primary mission of the sideline cheerleading squad was to cheer at men's and women's basketball games. (Tr. 551, 564)

102. In 2009-10, Quinnipiac added a varsity competitive cheer team and continued to maintain a separate sideline cheerleading squad. (Tr. 621-22)
103. Quinnipiac University operates its competitive cheer team as a varsity sport. The purpose of the team is competition, and they engage in no sideline cheerleading. (Tr. 622)
104. Thirty student-athletes were on the competitive cheer team in 2009-10. The athletes played specific positions: main base, support base, back spot, and flyer. Each of those positions requires different skills and different physical attributes. (Tr. 616, 618-19)
105. The team was administered by the athletic department and treated in the same manner as all other Quinnipiac varsity sports. (Tr. 616; 627)
106. The team had a paid full time coach, Mary Ann Powers, and two paid part-time assistant coaches and a volunteer part-time assistant coach. (Tr. 568; 616)
107. The team was given an operating budget that was administered through the athletic department. The team was not required to, nor did it, raise funds for its operation. Excluding scholarships and coaching salaries, the team expenditures for the 2009-10 academic year totaled approximately \$130,000. (Tr. 631-32)
108. All of the members of the varsity competitive cheer team were required by Quinnipiac to meet NCAA rules for academic eligibility and had to be cleared by the sports medicine staff. (Tr. 622-24)
109. The student athletes were provided with all necessary equipment, including mats, numbered uniforms, shoes, warm up outfits, and bags. The team's expenses for travel, meals, insurance, recruiting and other administrative costs were covered as well. They had access to strength and conditioning coaches, trainers, academic support, and scholarships. They were eligible for awards given to varsity athletes. In fact one of the team members was recognized as a scholar athlete. (Tr. 628, 630-31)
110. The University's Sports Information Department covered the team and issued press releases about them just like all other varsity teams. (Ex. FF; Tr. 629-30)
111. The Competitive Cheer student-athletes were required to participate in mandatory study time, called "power hours", in accordance with the athletic department rules that apply to all varsity athletes. Freshman were required to attend power hours during the first semester and any students who did not maintain a 3.0 gpa were required to attend power hours as well. (Tr. 622-23)

112. The Competitive Cheer student-athletes were required to and did participate in “positive play” in accordance with the athletic department rules that apply to all Quinnipiac varsity athletes. (Tr. 623-24)
113. The University provided Coach Powers with a total of six full scholarships to award to her team, but she was permitted to divide that sum among as many athletes as she chose. Coach Powers chose not to award all six scholarships in the first year so that she could use them for recruiting in the future. Instead, she chose to award the equivalent of approximately 1.5 scholarships and to divide them among 13 student-athletes. (Tr. 633)
114. The team members were selected based upon their athletic ability. Coach Powers assessed the skill level of the returning students who were members of the 2008-09 cheerleading squad, which had competed in addition to their sideline responsibilities, and determined that 16 had the skills necessary to participate in the varsity team. She offered 13 of those athletes scholarship dollars. (One of them elected not to participate in the team.) In order to identify the remaining members of the 2009-10 team, Coach Powers held a clinic in the beginning of the year for students interested in going out for the sport. She had been in contact with many of the students throughout the prior year and had encouraged the athletes with the highest skills to come to Quinnipiac. At the clinic the students were required to practice and perform the various athletic skills that would be required in competition, including standing tumbling, running tumbling, jumps, basket tosses, pyramids and partner stunts. She identified the students with the requisite skills and invited them to join the team. She selected 13 students from the clinic to be on the team. One athlete quit a few weeks into preseason practices and was replaced by a graduate student who had participated on the sideline team as an undergraduate. The graduate student was awarded a scholarship as well. (Tr. 569-73, 619-21)
115. The team was also required by the University to comply with NCAA rules regarding hours of practice, competition, and other team activities. (Tr. 624)
116. Prior to the commencement of their defined championship season and in accordance with NCAA rules, the team practiced in groups of eight or ten for eight hours per week, focusing upon skills for four hours per week and strength and conditioning for the other four. For the duration of their defined season, the team was limited to 20 hours per week of team activities which include practice, competition, team meetings, etc. (Tr. 625)
117. The team participated in ten competitions during the 2009-10 season. In three of those competitions, they competed against other college varsity competitive cheer teams. In the remaining competitions, they competed

against club teams that do not engage in sideline cheerleading activities and teams that compete in addition to their sideline cheerleading responsibilities. (Ex. 41; Tr. 578 – 608)

118. In 2009-10, five colleges sponsored varsity competitive cheer teams that did not engage in any sideline cheerleading activities. Those schools are Quinnipiac University, University of Maryland, University of Oregon, Fairmont State, and Azusa Pacific. (Exs. 132, 135)
119. In September 2009, those five colleges along with Baylor University, which announced its plans to sponsor a varsity team in 2010-11, Fort Valley State and Ohio State, gathered to form the National Competitive Stunts and Tumbling Association (“NCSTA”). The NCSTA was established to serve as the governing body for the varsity sport of competitive cheer. For 2009-10, the NCSTA set a defined 132 day season, which began in early December 2009 and ended April 9, 2010. The NCSTA further set rules governing the maximum number of coaches, the maximum number of equivalency scholarships, the surface on which competitions would occur, and access to sports medicine at practices and competitions. (Exs. FT, 43)
120. The NCSTA developed a new meet format for competition. The meet format includes compulsory and optional rounds in stunts, basket toss, pyramid, tumbling as well as a traditional 2.5 minute team routine. The scoring for the meets is standardized. Similar to gymnastics and figure skating, skills are given a predetermined difficulty score and the athletes are judged based upon their ability to execute those skills. The meet format is designed to allow two teams to compete against one another in head-to-head competition. In a head-to-head competition the meet should last approximately two hours. (Exs. 44, FB; Tr. 645 – 55)
121. The first meet conducted in the new format was conducted on February 5, 2010. Seven schools, including Quinnipiac, competed in the meet. Quinnipiac also competed in an NCSTA format meet against the University of Maryland on February 28, 2010. (Exs. 41, FB, FE; Tr. 591 – 92)
122. The remaining eight competitions were governed by private competition organizations. The team performed a 2 minute 30 second or 2 minute 15 second routine in which they demonstrated their skills in tumbling, pyramids, basket tosses, and partner stunts. The team was judged based upon the level of difficulty of their routine and the execution of it, including technique, stability, and synchronization. (Ex. FB; Tr. 641 – 42)
123. Throughout the course of the year, the NCSTA further developed and refined their rules and policies. These include the number of student athletes permitted to participate in competition, the number permitted to

- travel to regular season competition, the number permitted to travel for post-season competition, the requirements for numbered uniforms, how officials will be hired, trained and paid, post-season qualification, and All-American qualification. In addition, they have developed software to manage scoring and to maintain statistics about individual athletes. They have also developed a website, logo, and marketing materials for the sport. The NCSTA has also developed and refined its safety guidelines. (Exs. 98, FG, FW; Tr. 656 – 59)
124. For the 2010-11 season, NCSTA rules require that varsity teams participate in at least four NCSTA meets in order to qualify for the post-season tournament. (Exs. 98, FG)
 125. Quinnipiac is scheduled to participate in five regular season meets in the NCSTA format against other varsity teams in 2010-11. The University also plans to host a meet against club teams in the region who have expressed an interest in competing in the NCSTA meet format. Quinnipiac will also participate in several traditional cheer competitions. (Tr. 659 – 60)
 126. The NCSTA post-season tournament will take place in April 2010 at the University of Oregon. The tournament will use a bracket system and each varsity team will be assigned a ranking based upon its regular season record. The top two seeds will get a bye in the first round. There will be a total of three rounds and the winner will win the national championship. (Tr. 660 – 62; Ex. FG)
 127. Several high school athletic associations have expressed interest in using the NCSTA meet format as well. (Tr. 669)
 128. The NCSTA intends to file for NCAA Emerging Sport status in the spring of 2011. (Ex. 98)
 129. Although Coach Powers did not obtain her NCAA off-campus recruiting certification until June 2010, she had a very successful recruiting season. For the 2010-11 season, Coach Powers offered scholarships to eleven incoming students, nine of whom accepted. In addition, she guaranteed spots on the team to three incoming students who will not receive scholarships and one returning student who did not compete in 2009-10 due to the academic constraints of her program. (Tr. 636 – 40)
 130. All 30 of the athletes on the 2009-10 team participated in competition over the course of the season. (Ex. EW)
 131. Of the 30 student-athletes on the 2009-10 team, 24 have indicated their intent to be on the team in 2010-11. Of those 24, only 18 are guaranteed spots. The remaining six will have to try out. The roster size for 2010-11 is 36. Based upon the inquiries she has received from incoming students,

Coach Powers expects to have approximately 35 students trying out for five spots. (Tr. 639 – 41)

Conclusions of Law

132. Title IX states, in pertinent part, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” 20 U.S.C. 1681(a).
133. Interscholastic athletics are included within the meaning of “program or activity” covered by Title IX, and the Code of Federal Regulations consider whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes when determining whether a university is providing equal opportunity. 34 C.F.R. 106.41(c).
134. A Policy Interpretation issued by the Office of Civil Rights (“OCR”) in 1979 provides three ways (the 3 prongs) for a university to comply with the requirement to provide effective accommodation of students’ interests and abilities: (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or (3) Where the members of one sex are underrepresented among intercollegiate athletics, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program. OCR 1979 Policy Interpretation.
135. Quinnipiac complied with Title IX in 2009-10 by meeting Prong 1, through providing athletic participation opportunities substantially in proportion to the University’s undergraduate enrollment.
136. Quinnipiac counted the number of athletic participation opportunities it provided to students correctly, by following the OCR’s instructions, as set out in the 1979 Policy Interpretation and 1996 Clarification, which both define participants as those athletes:
 - a. Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport’s season; and

- b. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and
 - c. Who are listed on the eligibility or squad lists maintained for each sport, or
 - d. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability.
137. Quinnipiac correctly counts its athletic participants by counting those athletes who were members of the team as of the first date of competition. OCR 1996 Clarification ("As a general rule, all athletes who are listed on a team's squad or eligibility list and are on the team as of the team's first competitive event are counted as participants by OCR."). Quinnipiac is correct in not double-counting as participants both people who were added to teams after the first date of competition for legitimate reasons as well as people who were deleted from teams after the first date of competition for legitimate reasons.
138. Quinnipiac is correct in not counting as athletic participants individuals who were removed from teams before the first date of competition, or added to teams after the last date of competition. OCR 1996 Clarification (noting that participants are only those athletes who obtain benefits "during a sport's season," and that a sport's season commences "on the date of a team's first intercollegiate competitive event" and concludes "on the date of the team's final intercollegiate competitive event").
139. Quinnipiac correctly counted athletes for Title IX who were on teams as of the first date of competition, who received coaching, equipment, medical and training room services, and participated in organized practice sessions and other team meetings and activities on a regular basis during a sport's season, but who were not elite athletes.
140. Quinnipiac correctly counted as participants athletes who were injured during the season and did not compete because they were training to recover from their injuries.
141. Quinnipiac correctly counted as participants athletes who were on scholarship and were members of teams, but did not compete and were red-shirted.
142. Teams are separate for purposes of Title IX when they are distinct teams that are recognized as different sports by the NCAA and have different NCAA championships.
143. Quinnipiac correctly counts its cross country, indoor track and field and outdoor track and field athletes, counting athletes who compete in two or

- three of these teams as participating in separate teams. OCR 1996 Clarification (“In determining the number of participation opportunities for the purposes of the interest and abilities analysis, an athlete who participates in more than one sport will be counted as a participant in each sport in which he or she participates.”); *Miller v. Univ. of Cincinnati*, No. 1:05-cv-764, 2008 U.S. Dist. LEXIS 4339 (S.D. Ohio, Jan. 22, 2008) (“it is proper for the University to count an athlete who competes on the cross-country team, indoor track team and outdoor track team as competing on three separate teams”).
144. The athletes on Quinnipiac’s Competitive Cheer team count as varsity athletes for purposes of Title IX. The team meets the standards set out in the OCR’s April 11, 2000 Letter to David Stead and OCR’s September 17, 2008 Dear Colleague Letter. These letters both set out a series of factors to be weighed in making an “overall” determination as to whether an activity is a sport. These factors are not a checklist, and neither the 2000 Letter nor the 2008 Dear Colleague Letter instructs institutions to give particular weight to any single factor.
 145. OCR explained that it considers “whether the activity is structured and administered in a manner consistent with established intercollegiate or interscholastic varsity sports in the institution’s athletics program,” looking at whether such things as its budget and coaching staff are administered by the school’s athletics department, whether participants are eligible to receive scholarships, and whether participants are recruited consistent with other varsity sports. 2008 Dear Colleague Letter.
 146. OCR also considers whether a team has practice opportunities consistent with other varsity sports, competitive opportunities, pre-season and/or post-season competition, and whether the “primary purpose of the activity is to provide athletic competition at the intercollegiate or interscholastic varsity levels rather than to support or promote other athletic activities.” OCR clarified that its policy is “to encourage compliance with the Title IX athletics regulations in a flexible manner that expands, rather than limits, student athletic opportunities.” 2008 Dear Colleague Letter.
 147. Quinnipiac’s Competitive Cheer team meets the standard for a varsity sport. This sport is extremely athletic and demands high levels of strength, precision and flexibility. The sole purpose of the Competitive Cheer team is to engage in intercollegiate competition. Quinnipiac’s Competitive Cheer team does not cheer for other teams. Quinnipiac has a separate, unrelated sideline cheerleading squad that cheers for other sports teams. The team trains and practices like other varsity teams, recruits like other teams, offers scholarships like other teams, and competes like other teams. The Competitive Cheer team is administered by Quinnipiac’s athletics department in the same way as every other varsity sport at the University.

148. Quinnipiac satisfies Prong 1 by providing substantially proportionate athletic opportunities to men and women. *See Equity in Athletics, Inc. v. Department of Educ.*, 675 F. Supp. 2d 660 (W.D. Va. 2009) (noting the court has been unable to locate “any authority to support the proposition that a disparity as low as 2% is substantially disproportionate as a matter of law”); *Boulahanis v. Board of Regents*, 198 F.3d 633, 639 (7th Cir. 1999); *Miami Univ. Wrestling Club v. Miami Univ.*, 302 F.3d 608, 611-14 (6th Cir. 2002); *Miller v. University of Cincinnati*, No. 1:05-cv-764, 2008 U.S. Dist. LEXIS 4339, at *20 (S.D. Ohio Jan. 22, 2008).
149. Plaintiffs’ claims in Count 1 of the Amended Complaint, addressed to participation, therefore are without merit and should be dismissed.