

Biedeger v. Quinnipiac University

DATE: April 14, 2014 [Corrected April 21, 2014, Sects. G-3 and H-2]

TO: Hon. Stefan J. Underhill, USDJ

CC: Counsel for the Parties
Mark Thompson, Executive Vice President and Provost,
Quinnipiac University

FROM: Jeffrey Orleans, Referee

SUBJECT: **Referee's Baseline Review and
Initial Findings and Recommendations**

Pursuant to the charge to the Referee in Section V-D of the Consent Decree to "implement and monitor compliance with Quinnipiac's obligations" under the Decree, I am pleased to submit to the Court and to counsel this Referee's Baseline Review and initial findings and recommendations. I appreciate both parties' cooperation in all of the work that has occurred since the Decree was signed last June, and of course I would be pleased to answer any questions that the Court may have.

As developed in the **Preface**, below, and throughout this Review, I believe that Quinnipiac has made a successful beginning in implementing the Decree. At the same time, and as I think both parties anticipated in developing the Decree and in providing for this initial assessment, significant additional tasks remain; I will continue to work with Quinnipiac throughout the spring, including campus visits that will begin this week. Quinnipiac will report to me and to the plaintiffs on May 16, and I then will report comprehensively on all of Quinnipiac's efforts in the required Annual Referee's Report on June 14.

My overall goal for this first year has been for Quinnipiac to have in place for 2014-15 the administrative, policy and resource capacities to fulfill and clearly account for all its Title IX responsibilities, in its overall athletics expectations and planning and in day-to-day athletics decisions and operations, for the benefit of all of its athletes, both women and men. I thus have tried to use the Review not only to determine and document what Quinnipiac's compliance status is now, but also to define what else needs to be done and to help Quinnipiac begin to make those changes.

These efforts began with a campus visit in July 2013 and have proceeded continuously since then, involving interviews and meetings with institutional administrators, coaches and teams, athletics staff, and counsel for both parties; consideration of extensive materials submitted by both parties, including comments on earlier drafts of this document and other issue-specific memoranda from me and on periodic status reports

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by Quinnipiac; and frequent telephone and email consultation. Each party has had access to any material provided by the other party on which I have relied.

This Review so as to bring together issues that the Decree addresses in different places: following the **Preface**, Sections **A** through **G** each quote relevant Decree requirements in *italics*, followed by my analysis, conclusions and recommendations; Section **H** then presents the specific “spending” recommendations called for in Decree Sections V-C-3 and V-D-8.

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Preface

Quinnipiac has made clear commitments to compliance with the Consent Decree throughout the year and compliance responsibility has been assumed by appropriate senior institutional leadership, led by the Provost/Executive Vice President. For example, the introduction to Quinnipiac’s March 31 status report to me states:

With the data and analysis presented herein, Quinnipiac wishes to reaffirm its unwavering commitment to fulfilling all aspects of the Consent Decree and to demonstrate how, with the benefit of outside expertise, it has been actively implementing policies and practices in line with best practices that will assure its self-sufficient capacity, not only to comply with Title IX, but also to provide solid evidence of that compliance routinely.

As detailed in this Review, I conclude that Quinnipiac has:

- * Fulfilled the specific “Decree” commitments required for 2013-14, including submission of appropriate facilities and “tiering” plans;
- * Made tangible financial investments, both specifically for “Decree” requirements, and by focusing on gender equity considerations in responding to overall athletics needs;
- * Shown significant progress in developing needed administrative and budget changes and undertaking or beginning needed analyses of “operating” athletics policies and resources; and,
- * Sought and been responsive to my recommendations (and to various suggestions from the plaintiffs) and to my requests for reports and analyses.

At the same time, this **Review** is the first “post-litigation” attempt to address Quinnipiac’s current and future Title IX compliance, in detail and in one place. As such it is specifically intended not only to recognize achievements but also to identify

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remaining questions, so that those questions can be answered and additional needed change can be accomplished. Recognizing that work remains to be done, in other words, should not detract from the start that Quinnipiac has made in implementing the Decree and in providing gender equity in its athletic activities.

Specifically, it has been clear from the beginning of our efforts that Quinnipiac first needed to clarify or develop operating policies and/or budgets in many athletics areas, often extensively, before I could begin to determine whether there are equity issues in those areas. That work has required substantial campus involvement and taken substantial time. It also has given Quinnipiac important experience in understanding what Title IX and the Decree mean and how they apply, and in developing the capacities that it will need to achieve and maintain compliance without external supervision – both of which are essential goals of the Decree.

It thus also has seemed from the start that while this Baseline Review would present significant conclusions and recommendations, the entire academic year would be needed to finish all of this work, and that has proven to be the case¹. As noted, the June Referee's Report will be a complete review of all relevant issues in order to provide a clear basis for athletics gender equity in 2014-15: given the extent of change that has been needed this year, I believe this process has moved as quickly as has been possible, and that real and essential progress has been achieved.

A. Overall Title IX compliance, policy and grievance procedures, staffing, training

I-A. Quinnipiac acknowledges its obligation under the law to comply with Title IX in the operation of its athletic program.

I-B. Quinnipiac shall promptly develop a Title IX nondiscrimination policy and grievance procedure, which it shall disseminate prominently on its website and annually in its student handbook, athlete handbook, and faculty/staff handbook no

¹ For example, Quinnipiac implemented a new institution-wide zero-based-budgeting approach this winter in preparing the 2014-15 institutional budget, including the athletics budget, which provided much more accurate budget data than had been available previously, but the first budget estimates were not available for review until late March. Similarly, because the Decree did not require Quinnipiac to choose its additional Tier 1 sport(s), or to define its approach to Tier 1 sports, until late December, evaluation of proposed policies and support for Tier 1 sports could not begin until January, with the projected budget figures then not available until March.

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later than the beginning of the 2013-2014 academic year, in accordance with 34 C.F.R. §§106.8 and 106.9.

I-C. Quinnipiac shall ensure that its Title IX coordinator is trained concerning gender equity in athletics and that he/she will participate in ensuring Title IX compliance in the athletic department.

Quinnipiac has repeatedly affirmed its commitment to Title IX compliance in athletics and has worked continuously since June on the issues in this area -- responding to recommendations from me and in a number of areas from the plaintiffs; using outside materials from sources such as OCR, the NCAA, NACUA (the National Association of College and University Attorneys) and ATIXA (Association of Title IX Administrators); and engaging a nationally-known consultant. I believe the substantial changes described in this Section **A** present a good basis for Quinnipiac’s long-term provision of gender equity in athletics.

1. “Quinnipiac University Title IX Discrimination and Harassment Policy & Procedures”

Quinnipiac provided an initial Title IX policy and procedures document before the start of fall term 2013, based on past materials that focused primarily on sexual harassment but expanded to apply to Title IX, gender equity and sex discrimination more generally. The current document reflects continuing revision since the fall and will be revised again this spring for 2014-15; Quinnipiac will provide this text in its May 16 report.

Recognizing that institutions have some discretion in the design, wording and application of Title IX policies and procedures, I believe these materials are appropriate and that the structure they create should be effective. I will expect the Gender Equity Committee and Quinnipiac administrators to review this area annually, including review of use of the grievance procedures by the Quinnipiac community.

Quinnipiac complied with the requirements of Decree Section I-B (above) as to dissemination of the policy at the start of the 2013-14 academic year, and has made the policy and procedures accessible from the University’s main (www.quinnipiac.edu) and athletics (www.quinnipiacbobcats.com) websites; the full texts are available at http://www.quinnipiac.edu/prebuilt/pdf/about/QUTitleIXPolicy_121813.pdf. Notice of the current policy, and its online availability, was emailed to all student-athletes in fall 2013; such notice will continue annually and the 2014-15 materials also will be in the Athletics Staff and Student-Athlete Handbooks.

Vice President Thompson discussed the Decree and the policy and procedures, and

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introduced Associate Vice President for Student Life Monique Drucker as the Title IX Coordinator, at the athletic department student-athlete/coach and coach/staff/Athletic Council meetings the first week of fall term 2013. Ms. Drucker also met separately with every team during the fall term to discuss the Policy and Grievance Procedure (two fall-team meetings took place in January). These or similar activities will take place again this fall, including involvement of the new Athletic Title IX Officer as discussed below.

2. “Ensuring Title IX compliance in the athletic department [Decree I-C]”

The institutional Title IX Coordinator (Ms. Drucker) was appointed before the 2013-14 academic year began, has undertaken relevant training (below) in her overall and grievance procedure roles and in Title IX athletics issues, and was involved in all my fall 2013 campus meetings. During this year the Provost has been responsible for strategic and budget decisions, administrative changes and reporting to me as to athletics gender equity generally and Decree compliance specifically.

Both to help the athletics department fully assume “Title IX” responsibilities in its operations (with overall institutional oversight), and to implement the Decree’s otherwise undefined provision that the Title IX Officer “participate in ensuring Title IX compliance in the athletics department,” I recommended that a senior athletics administrator be appointed as an Athletics Title IX Officer, working with both the Provost and Ms. Drucker, and receive training appropriate to this work.

Quinnipiac appointed Ms. Tami Reilly, Associate Athletic Director for Fitness and Wellness, as the Athletics Title IX Officer and Deputy Title IX Coordinator for Athletics effective March 1, 2014. Ms. Reilly will “focus on Title IX responsibilities in athletic planning and operations”; any grievances that may arise from the athletics department will continue to be addressed by Ms. Drucker. Ms. Reilly is a senior administrator with wide campus experience who will be a member of the Gender Equity Committee, Quinnipiac has an appropriate job description for her duties, and I will meet with her this spring.

I also recommended that Quinnipiac develop a process for reviewing and reporting on gender equity in athletics each year. In response, Quinnipiac has established a Gender Equity Committee on Athletics with significant responsibilities for reviewing athletics and for reporting to the athletic director and the Athletics Title IX Officer, including development of an “annual internal athletics gender equity review” that will reflect input from the Student-Athlete Advisory Committee and from a student-athlete survey². As

² The Committee is chaired by the institutional Title IX Coordinator and also includes the Athletics Title IX Officer, four coaches (one men’s and one women’s head coach from Tier 1 and non-Tier 1 teams), two senior athletics administrators, a male and female

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Quinnipiac points out, establishing this Committee goes beyond the Decree's requirements, and I believe it can make a significant long-term contribution to Quinnipiac's gender equity efforts; I will meet with the Committee this spring.

Quinnipiac reports the following training activities, which I believe satisfy the Decree's expectations:

* Ms. Drucker "took" a multi-part online NACUA Title IX training course in fall 2013.

* Ms. Reilly and Athletic Director Jack McDonald will attend the NCAA Diversity/Gender Equity seminar from May 1 to 3, 2014 (I expect to meet with them there).

* Janet Judge, Esq., President of Sports Law Associates, conducted training sessions on February 25, 2014, for the Gender Equity Committee, including Ms. Reilly, and for athletics department staff members.

B. Other general commitments

1. Changes in sports

II-A-2. Quinnipiac will not eliminate any varsity women's athletic team except as otherwise permitted in Section II.A.3.

II-A-3. If Quinnipiac eliminates a women's varsity athletic team, it will replace the team with an NCAA championship sport team(s) that provide a comparable number of participation opportunities.

II-A-4. Quinnipiac is not required to add any additional varsity athletic teams during the term of this Consent Decree, except as may be required by Section IV herein.

Quinnipiac has indicated that it has no plans to act in any way that would involve these obligations.

2. Club teams

student-athlete (one is Co-Chair of the SAAC), the faculty representative to the institutional Athletics Council, the Vice President for Facilities and Capital Planning and the institutional Human Resources officer assigned to Athletics.

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II-D. If Quinnipiac sponsors or otherwise provides support to club sports teams during the term of this Consent Decree, it must allocate those opportunities on a gender equitable basis.

Quinnipiac does not presently sponsor or support club sports teams and I believe it understands its obligations if it decides to do so. Quinnipiac has provided complete responses to my questions about the New Blue Rugby Team, a men's team that is comprised of Quinnipiac undergraduates and that was at issue during the litigation. I am satisfied that Quinnipiac does not support or have a relationship with that team and that it is not a sponsored or supported club sport team within the meaning of the Decree [see also Section **G-3** below].

3. Men's teams

IV-A. During the term of this Consent Decree, Quinnipiac will not create additional men's sports teams unless it also creates additional women's teams that provide at least an equal number of athletic participation opportunities.

IV-B. During the term of the Consent Decree, Quinnipiac will not significantly increase the number of athletic scholarship awards for male athletes unless it simultaneously increases (beyond the requirements of this Consent Decree) the number of athletic scholarship awards for female athletes by at least the same number of athletic scholarships.

IV-C. Quinnipiac may, upon reasonable notice to Plaintiffs, seek relief from the Referee from the requirements of this Section IV in response to circumstances reasonably supporting the need for such relief, which include, by way of example:

- 1. A significant increase in the proportion of full-time male undergraduate students; or*
- 2. A significant increase in the number of varsity athletic participation opportunities provided to female students.*

Quinnipiac has indicated to me that it has no plans to act in any way that would involve these obligations.

C. Facilities

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V-A-1. Quinnipiac will spend at least \$5 million to improve the permanent athletic facilities (other than TD Bank Sports Center) used by its women's varsity sports teams, including renovation and/or construction of locker rooms, exercise and weight training facilities, athletic training facilities, practice and competition facilities, and office space for head/assistant coaches, so that they are comparable to the facilities provided to men's varsity sports teams in the same tier.

V-A-3. Quinnipiac will build an indoor track & field facility for practice and competition. The facility will meet NCAA standards for hosting indoor meets.

V-A-5. Quinnipiac will consult with the Referee during the planning process for the facility improvements described herein ("facility improvements"). The Referee may, at his/her discretion, consult with Plaintiffs' counsel with respect to the facility improvements.

V-A-6. Within six months of the Court's approval of this Consent Decree, Quinnipiac will present to the Referee and Plaintiffs' counsel a projected schedule for completion of the facility improvements, which shall project that all of the facilities improvements will be completed by no later than June 30, 2018. Quinnipiac shall make good faith efforts to complete all facility improvements in accordance with the schedule. QU shall report to the Referee and Plaintiffs' counsel at such intervals as the Referee shall determine concerning its progress toward completion of the facilities improvements.

Quinnipiac's facilities schedule was timely submitted on December 20. It projects completion dates for fall 2016 for the lacrosse/soccer and field hockey stadiums and the new rugby pitch (with plans that appear to provide for appropriate facilities), spring 2017 for the indoor track and field venue and spring 2018 for any needed renovations to the Mt. Carmel Center. Quinnipiac has discussed its facilities plans during each of my in-person meetings, beginning last spring, and has presented clear timelines consistent with the Decree's June 30, 2018, final completion date, supported by this commitment:

In addition to the specific commitments in the Decree, these facilities will be constructed so as to assure gender-equitable provision of locker-rooms, training and strength and conditioning facilities and opportunities, and other support for athletics, and to assure that all Tier 1 sports have appropriate space and support.

As construction schedules become more concrete [Quinnipiac] will provide updates including our specific plans for temporary practice and competition venues for teams displaced during construction.

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I will review all the facility plans as part of the June Report, including the “interim” issues noted below and “support” topics such as laundry and storage access, “media-ready” capabilities and spectator facilities (all of which we have discussed during this year); that process will provide an opportunity for plaintiffs to review and comment upon the proposed plans.

Quinnipiac had originally hoped to open the new fields and rugby pitch in 2014, which would have assured appropriate fields for the new Tier 1 teams and for rugby and also made important changes in locker-rooms and other support services for some Tier 1 and non-Tier 1 teams based on the Mt. Carmel campus³. While the current schedule clearly complies with the Decree, and while I am satisfied that it reflects institutional budgeting decisions that are unrelated to compliance with the Decree, it also requires consideration of interim changes in these regards, as discussed below in Section **D-2**.

The commitment in Decree Section V-A-1 refers to “permanent” facilities; the Decree does not seem to address temporary facility construction that might be appropriate to support Tier 1 status or to provide gender equity in student-athletes’ day-to-day experiences, of which locker-rooms are a central part. I consider these to be high priorities for possible additional investment, and I return to this subject in my recommendations for 2013-14 and 2014-15 discretionary spending in Section **H** below.

D. Tiering

V-B. The parties recognize that Quinnipiac currently treats men’s and women’s basketball and ice hockey as tier one sports (also denominated as “sports of emphasis”). Quinnipiac will take measures to elevate two (2) additional women’s teams to tier one as follows [1. Field Hockey, below]:

V-B-2. Additional tier one team. Within six months of the Court’s approval of this Consent Decree, Quinnipiac shall identify an additional, fourth women’s team as a tier one sport. Promptly after identifying the additional women’s team, Quinnipiac will (a) initiate the process of hiring any additional coaches necessary to provide the team with the maximum number of coaches allowed by NCAA rules and (b) provide

³ Women’s soccer (a new Tier 1 team) and softball share a locker-room, as do rugby and women’s cross-country/track and field. Field hockey and women’s and men’s lacrosse have their own locker-rooms, but their facilities and laundry services differ from those of the four teams located in the TD Bank Center.

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the head coach of the team with the authority to award the maximum number of athletic scholarships allowed by NCAA rules. Quinnipiac's obligation to provide this fourth women's tier one team with the maximum number of athletic scholarships allowed by NCAA rules shall extend until at least June 30, 2018, notwithstanding the termination of the Consent Decree. Quinnipiac will also provide this team with a superior practice and competition facility based on NCAA Division I standards for the sport in accordance with the schedule to be presented under in Section V.A.6 above.

V-B-3. If Quinnipiac adds more men's teams to tier one during the term of the Consent Decree, then it must also add a proportionate number of women's teams or female athletes to tier one.

The "tiering" decisions required above were timely submitted on December 20, also following discussions with me beginning in July, providing as follows:

The University will elevate the following sports to Tier 1 status: Women's Soccer and Women's and Men's Lacrosse. Already existing Tier 1 sports include Men's Basketball, Women's Basketball, Men's Ice Hockey, Women's Ice Hockey and Field Hockey. There will be 5 Tier 1 women's sports and 3 Tier 1 men's sports. We believe these changes meet the requirements of Section V-B of the Decree in that we will provide the maximum number of coaches, the authority to award the maximum numbers of scholarships, and provision of a superior practice and competition facility.

Tier 1 sports will be differentiated from other sports in the following areas. Please note that work on more details is ongoing in particular with the plans for wellness/conditioning and publicity.

- *Scholarships – maximum allowable*
- *Coaching*
 - *maximum allowable full-time coaching staff*
 - *head coaches recruited on national basis*
- *Facilities*
 - *superior practice and competition facilities*
- *Recruiting – national scope with appropriate funding*
- *Wellness and Conditioning*
 - *practice/game medical staff*
 - *preferred access to weight rooms/strength coaches*
- *Publicity*
 - *preferred sports information coverage*

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- *specific promotion and marketing plans appropriate for Tier 1 sports*

“Tiering” involves two issues: the “proportionate” provisions with regard to choice of teams, and overall support and resources for and among Tier 1 teams.

1. “Proportionate” requirements

Quinnipiac has complied with its initial obligations to designate field hockey and a second women’s sport as new Tier 1 teams. However, because Quinnipiac also proposes Tier 1 status for an additional men’s sport, there also must be a finding as to whether the proposed pattern of Tier 1 sports meets the requirement of Decree Section V-B-3 -- that in addition to field hockey and a second new women’s tier 1 sport, Quinnipiac also must

add a **proportionate number** of [other] women’s **teams OR female athletes** to tier one [all emphases added].

Arithmetically, this text seems to include four possible comparisons that could define “proportionality”⁴; namely, the percentage of⁵:

- a. **Tier 1 teams that are women’s teams**, compared to the percentage of undergraduates who are women: Quinnipiac’s proposal makes 5 of the 8 Tier 1 teams as women’s teams, or 62.5%, against a women’s enrollment percentage of 61.9%;
- b. **Women’s teams that are in Tier 1**, compared to the percentage of men’s teams that are in Tier 1: 38.5% (5 of 13 teams) counting rugby or 41.7% (5 of 12 teams) not counting rugby, compared with 42.9% (3 of 7 teams) for the men’s teams;
- c. **Tier 1 athletes who are women**, compared to the undergraduate

⁴ If all women’s and men’s teams had the same squad sizes, “team” and “athlete” ratios would be the same in any Tier 1/non-Tier 1 pattern. But because different teams have different squad sizes, the same numbers and ratios of women’s and men’s Tier 1/non-Tier 1 **teams** can produce different Tier 1/non-Tier 1 **athlete** ratios, depending on which teams are placed in Tier 1. And because the number of teams is so much smaller than the number of athletes, a change in Tier 1 status for even one team will cause a larger change in the team ratios than in the athlete ratios.

⁵ For reasons unrelated to either my conclusions here or to the Decree’s provisions for support of rugby (Section **G** below), the parties disagree as to whether rugby should be included in calculating these percentages; the parties agree that the calculations should exclude Acrobatics and Tumbling pursuant to Decree Section VIII-A.

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women's percentage: 58.6%, against an enrollment figure of 61.9%.

d. **Women athletes who are in Tier 1**, compared to the percentage of male athletes who are in Tier 1: 41.9% (119 of 284 women athletes) counting rugby or 45.6% (119 of 261 women athletes) not counting rugby, compared with 51% for male athletes.

The Decree is silent as to what absolute differences between the two numbers in any of these comparisons should or should not be considered "proportionate", or as to how to choose among these four ratios if they suggest different results⁶. I consider the results in A, B and C to be "proportionate", and the result in D not to be proportionate.

Women's soccer and women's and men's lacrosse all are plausible teams for Tier 1 status in terms of potential competitive success and spectator interest and support. If Quinnipiac ultimately wants all these teams to receive Tier 1 support, making that change at this time provides for oversight under the Decree -- as opposed to a potential lack of oversight if the change were to be made after the Decree expires -- and also allows Quinnipiac to make all its major budget, policy and tiering changes, and to design all its new administrative approaches, at one time.

In this context, and noting that the Decree's language does not favor any one test, or seem to require compliance with more than one test, I am on balance willing to accept Quinnipiac's proposal as meeting the "proportionate" requirement at this time.

I would emphasize, however, that "tiering" is a core component of the Decree, and it must be done correctly. The potential benefits of changing four rather than two teams to Tier 1 at one time (including field hockey) can be offset by the increased management, budget and accountability demands that are likely in every area of athletics administration: it will require consistent, detailed and conscious effort at every level to assure appropriate support for all the Tier 1 teams.

I will revisit this issue if changes in enrollment percentages or team sizes significantly change the comparisons quoted above. or if I identify problems in terms of resources for tier 1 Teams or that imply "de facto" Tier 1 status for non-Tier 1 teams (below).

2. Tier 1 support, resources and facilities

⁶The only guidance that I can infer from the Decree is that, had Quinnipiac moved only field hockey and any one other women's team to Tier 1 status, and no other teams, it would have complied with the Decree without reference to the number of athletes on those two teams or to the resulting "athlete" percentages.

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a. Generally

The Decree does not identify what Tier 1 status might mean other than through the references to coaches, athletic financial aid and permanent facilities quoted above and in Section C, and I believe that Quinnipiac has complied with these specific requirements.

Quinnipiac had not otherwise defined Tier 1 or “sport of emphasis” status in any formal way before the Decree was signed. As a practical matter, however, Tier 1 status clearly has involved and necessarily will involve many other resources for women’s and men’s basketball and ice hockey, both tangible and simply in terms of overall expectations⁷.

Since the beginning of our work under the Decree, therefore, I have asked Quinnipiac to develop additional “Tier 1” criteria, and I believe the “areas of differentiation” quoted above are an appropriate beginning framework. At the same time, all teams need and receive many other kinds of relevant support. Quinnipiac has made initial assessments of how all these resources are allocated to Tier 1 sports, as part of its overall analyses of these areas (Section F below), and I have preliminary comments about those assessments in subsection c of this Section.

Because Quinnipiac is changing four sports to Tier 1 status at the same time that Tier 1 status actually is being defined for the first time -- and when many resource areas also are being evaluated in detail for the first time, a process that is not yet finished – I will be better able to make detailed findings about Quinnipiac’s framework, and the allocation of resources under it, in the June Report. I have, however, provided at least a preliminary standard for this area in my work with Quinnipiac thus far:

⁷ Four of Quinnipiac’s sports are based in the TD Bank Arena on the York Hill Campus (men’s and women’s basketball and ice hockey, which are the “carryover” Tier 1 sports); all others are based on the Mt. Carmel Campus (including field hockey and any other sports that might be designated as Tier 1). Independently of past emphasis, these sports have different circumstances in many ways, some that relate to location and others that do not.

York Hill is a relatively new and sophisticate facility that provides practice and competition venues and support activities (e.g., training, strength and conditioning) in one place; as indoor sports, the York Hill teams do not confront weather issues in having practice and are generally among the most popular spectator sports. The Mt. Carmel Center is a more limited facility in many respects; virtually all the teams based in that facility compete outdoors, so that weather is a factor in their activities and their venues are removed from their locker and other facilities; and many of those sports traditionally have been less popular with spectators.

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* While equitable Tier 1 support does not necessarily mean identical policies or resources across all activities for every Tier 1 team, Quinnipiac should be able to demonstrate that the support for and treatment of all Tier 1 teams is appropriate in view of **all** relevant kinds of resources.

* While various non-Tier 1 teams may receive support in some areas that is similar to Tier 1 support, no non-Tier 1 team should be supported in the aggregate in a way that effectively confers “de facto” Tier 1 status on that sport.

b. Facilities

As noted earlier, the Decree is silent as to significant facility changes for new Tier 1 sports other than completing the specified new facilities by June 30, 2018. At the same time, as Quinnipiac and I have discussed since last fall, every effort should be made to provide “Tier 1” appropriate facility changes for the “new” Tier 1 student-athletes who will compete before those facilities open.

For example, as noted in footnote 7 above, TD Bank Arena provides significant resources for the four (indoor) Tier 1 sports located there, including sharing their venue with only one other team, not having practices vulnerable to bad weather, and having high-quality training, strength and conditioning, laundry and team-dedicated locker-room resources in the same facility in which they practice and compete. These conditions often do not obtain for teams on the Mt. Carmel campus, including specifically all the new (outdoor) Tier 1 teams⁸.

I thus have asked Quinnipiac to consider a number of issues in this regard that will be part of the “facilities” analysis for the June Report (Section **C** above), including especially:

* The condition and maintenance of the current practice/playing fields for field hockey, lacrosse and soccer, which Quinnipiac will reviewed after the spring seasons are over, in consultation with the coaches, and will repair as necessary; and,

* The fact that both soccer teams and both lacrosse teams share a single practice and competition facility during their “opposite” regular and non-traditional

⁸ Based on our initial discussions last summer of the field hockey, lacrosse/soccer and rugby facility plans, Quinnipiac provided for “team rooms” in the plans for those facilities that could serve as interim locker rooms until the Mt. Carmel Center is renovated; the current facility schedule will not provide those changes until fall 2016.

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seasons, and that women's soccer currently shares a locker-room, for which Quinnipiac indicates it has not at present been able to identify potential interim solutions.

I do want to note that by moving a non-athletics institutional function from the Mt. Carmel Center, Quinnipiac will be able to provide improved office space for the coaching staffs of the new Tier 1 teams.

c. Selected "support" areas

These comments illustrate the kinds of issues that are being pursued in the continuing review of Tier 1 resources this spring, based on the initial analyses that Quinnipiac completed in March that are discussed in Section F (the following comments refer specifically to potential Tier 1 issues):

* Preliminary analysis of per capita recruiting budgets shows clear differences between Tier 1 and non-Tier 1 sports that seem gender neutral. Within Tier 1, it shows differences between men's and women's basketball, men's and women's ice hockey, and those four sports and the four new Tier 1 sports, and presents preliminary gender-neutral explanations. All these figures will be reviewed in detail, in the context of each sport's recruiting environment and needs⁹.

* The proposals for expanded training services and expanded strength and conditioning resources provide adequate minimum services for all sports and have clearly different approaches to Tier 1 and non-Tier 1 sports; specific team assignments will be reviewed in both areas.

* The proposal for expanded sports information staffing also differentiates between Tier 1 and non-Tier 1 sports; as Quinnipiac notes, specific promotion plans will be developed this spring for the new Tier 1 sports. Review of the expanded staffing assignments and promotional plans will focus on effective consideration of the specific needs and opportunities of each sport.

* An important category that Quinnipiac does not list among its "differentiating" factors, but for which it will develop a policy and evaluate current team resources this spring, is support for non-league scheduling, both through travel expenses and through willingness to fund "guarantee" home contests.

⁹ For example, the head coaches of women's and men's basketball and ice hockey have had car allowances in view of their recruiting travel; Quinnipiac will need to consider whether such allowances should be provided to any other Tier 1 coaches.

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E. Benefits and Policies Specified in the Decree

1. Coaches' salaries

V-c-1-f. For the 2013-2014 academic year, increase the salaries of the coaches of the women's teams to no less than the median salaries in their sports in the Northeast Conference; and

V-c-1-g. Quinnipiac shall request from its new athletic conference, the Metro Atlantic Athletic Conference ("MAAC"), the data necessary to determine, on a current-year basis, the median salaries of the coaches of women's teams in the MAAC, accounting for the proportion of time devoted to coaching duties. If the MAAC provides the necessary data, then by the 2014-2015 academic year, Quinnipiac shall increase the salaries for the coaches of its women's teams if necessary to ensure that their salaries are no less than the median salaries of the coaches of women's teams in the MAAC in the same sports. No salaries of coaches of Quinnipiac's women's team shall be decreased based upon this data.

Quinnipiac has complied with this provision, beginning with a salary review for all head and full-time assistant coaches that increased salaries from 2011-12 to 2012-13 for 17 women's team coaches (a total of \$124,332) and 5 men's team coaches (a total of \$21,651). Quinnipiac has requested the 2013-14 MAAC data, and expects to receive it this month so that it can be used in setting 2014-15 salaries. Quinnipiac also is revising its overall personnel system in ways that should support gender equity through a clearer approach to hiring, evaluation and compensation for all personnel. Both the new salaries and the application of these policies will be part of Quinnipiac's May 16 report, so that I can review them for the June 2014 Referee's Report.

The "NEC" comparisons show that for all **head** coaches of women's teams, the 2013-14 mean salary is \$81,853, which is 142% of the 2012-13 NEC mean of \$57,754 and 151% of the NEC median of \$54,160. Salaries ranged from 101% to 205% of the NEC means and from 111% to 221% of the NEC medians. For all **full-time assistant** coaches of women's teams, the average figure of \$57,081 is 128% of the NEC mean of \$44,613 and 133% of the NEC median of \$42,974. Salaries ranged from 100% to 182% of the NEC means and from 107% to 195% of the NEC medians.

2. Athletic scholarships

III-A. For all women's sports for which Quinnipiac currently authorizes fewer than 50% of the maximum number of athletic scholarships allowed by NCAA rules, Quinnipiac will increase the authority of the head coach to award at least

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50% of the maximum number of athletic scholarships allowed by NCAA rules, beginning in the 2013-2014 academic year. The minimum number of athletic scholarships per team required by this Section III.A and by Sections III.B and V.B.1.a below are listed on Schedule A attached hereto.

III-B. For all women's sports for which Quinnipiac currently authorizes the head coach to award more than 50% of the maximum number of athletic scholarships allowed by NCAA rules, Quinnipiac will not decrease the coach's authority.

III-C. Beginning with the 2013-2014 academic year, Quinnipiac will authorize the maximum number of athletic scholarships allowed by the NCAA for all of its women's Tier 1 sports.

Quinnipiac authorized all coaches to award aid the required (III-A) aid beginning with the 2013-14 academic year, when the Decree was signed in June 2013; has authorized the required (III-C) aid beginning with award for 2014-15; and has neither decreased nor has plans to decrease coaches' authority to award aid (III-B). I will review the award of aid for 2014-15 when the award cycle is completed, later this spring.

In 2013-14, a small portion of the additional aid provided by the Decree was not actually awarded for fall term on three teams, because the recruiting/admissions cycle for 2103-14 freshmen athletes already had ended when that aid became available in June and the coach preferred not to award any "new" or remaining aid to non-seniors, so that the aid would be available after 2013-14 for award to an incoming recruit in 2014-15¹⁰.

It is not uncommon for coaches to retain some FTE aid in a particular year, in order to have it available in recruiting for the next year, rather than award that aid to athletes who will return the next year and may expect to continue receiving that aid. In these instances, however, the decision not to award aid was made without considering the Decree's focus on financial aid both to help develop specific women's teams and to assist women athletes as individuals.

I believe this omission was inadvertent: that is, in taking one of its first actions after the Decree was signed, Quinnipiac simply did not recognize the need for different oversight of coaches' decisions about financial aid. Nonetheless, I believe that all authorized aid should have been awarded for 2013-14, and that awards could have been made in ways that left the aid unencumbered for 2014-15. Quinnipiac agreed with this result and has reallocated the amounts in question to 2013-14 squad members¹¹.

¹⁰ The amounts equaled .63, .58 and .87 FTE (Full Time Equivalent) grants-in-aid.

¹¹ Quinnipiac also reallocated awards in a fourth sport, before the spring semester

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I do not expect this situation to recur, for a number of reasons:

* All coaches knew their aid levels and expectations for 2014-15, whether for athletes whom they are recruiting in 2013-14 and who will be freshmen in 2014-15, or for current athletes who will return in 2014-15, at the start of the 2013-14 recruiting cycle.

* Quinnipiac understood, as the year began, the need to work with coaches so that they would recruit full "pools" of potential aid recipients, and the expectations for full award of all authorized aid, and for review with me of recruiting results and aid awards for 2014-15, before the end of the 2013-14 school year.

* Quinnipiac also understood my expectation for an internal process to work with the coach whenever an athlete to whom aid has been committed withdraws, or does not enroll as expected, to assure that the aid that thus becomes available is reallocated for or during the year absent a compelling, gender-neutral and approved programmatic reason for not doing so.

* Quinnipiac will develop, for my approval, clear approaches both to routinely reporting such "reallocation" situations, and more generally to regularly providing NCAA squad lists that record and explain any such actions.

III-E. Quinnipiac will develop and implement a policy requiring gender-neutral allocation of summer, fifth-year, and other extra athletic financial aid.

Although Quinnipiac has had gender-neutral policies in these areas, they were not presented entirely consistently in the athletic staff and student-athlete handbooks. The policies have been revised to state clearly, in both sources, that all student-athletes in all Tier 1 sports are eligible for such aid, and that these are the only eligible athletes. Eligibility begins the summer following a sport's first Tier 1 year: field hockey athletes are eligible beginning summer 2014 and in 2014-15, women's soccer and women's/men's lacrosse athletes will be eligible for summer 2015 and in 2015-16.

Eligibility is based on specific academic need, which is to be confirmed by the coach. All requests for summer 2013 and 2013-14 aid were granted and I did not see any gender-equity issues in the patterns of team requests or awards, nor were any suggested in my team interviews. Both summer and degree-completion/fifth-year aid are separate from the aid budgeted and awarded as regular grants-in-aid.

began, on the coach's initiative, and in three other sports when aid became available after the beginning of spring semester.

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I will confirm this spring that field hockey athletes clearly understand their eligibility for such aid beginning this summer, that Tier 1 coaches understand that appropriate use of such aid should be encouraged, and that there is a review process for any instance in which a coach believes that a request should not be granted. I also will review the actual requests and awards for summer 2014 and for 2014-15, once the aid process is complete later this spring.

3. Other benefits specified in the Decree

V-C-1. By no later than the beginning of the 2013-2014 academic year, Quinnipiac will take (or has already taken) the following steps to improve the benefits provided to female athletes:

a. Allow all sports to play in the maximum number of competitions in the championship and non-championship seasons permitted by NCAA rules and provide the funding that allows them to do so;

Quinnipiac is in compliance with this provision, and my coach interviews in the fall did not indicate concerns about either travel or non-league scheduling. In 2012-13 Quinnipiac added \$38,000 thousand to travel budgets for traditional season travel and \$10,200 for non-traditional season travel to comply with this requirement. This area will be reviewed this spring and the Gender Equity Committee will assure that policies are developed for Tier 1 and non-Tier 1 sports.

Early-season scheduling in softball was noted specifically as an issue in both parties' expert reports during the litigation. The 2014 softball schedule included four long weekends in Florida this February and early March, with 15 total playing dates and travel by air. Both the former and current softball coach confirmed in my interviews that there was adequate support for this travel.

b. Allow all sports to begin practice at the earliest date permitted by NCAA rules;

Quinnipiac states that it is in compliance with this provision and my coach interviews and the fall-sport schedules supported this statement.

c. Provide athletic training coverage to all sports during the traditional and non-traditional seasons;

This area is addressed in Section **F** below.

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e. Hire an additional full-time employee in academic support for varsity athletes;

This position was filled appropriately in October 2012, but the new staff member accepted the position of full-time assistant coach of the rugby team in January 2014. The position was filled in January by a qualified new staff member, with a clear job description (academic support generally is discussed in Section F below).

F. Other benefits generally

V-C-3. In addition to the money to be expended pursuant to Section V.C.1, and in addition to any other monetary commitment(s) made under this Consent Decree, Quinnipiac will spend up to \$175,000 per year for the term of the Consent Decree for the purpose of ensuring equitable treatment and benefits for female athletes in the following areas. . . . Expenditures pursuant to this paragraph shall be made by Quinnipiac based upon the recommendations of the Referee in accordance with Section V.D.7

V-D-8. The Referee's recommendations made pursuant to subsections V.D.3 and V.D.7 above shall be entitled to substantial deference. Quinnipiac will implement the Referee's recommendations expeditiously unless it believes that they are unreasonable, impractical, or exceed Quinnipiac's obligations under the law or this Consent Decree.

The need to develop clear policies, evaluate current practices and/or establish projected "zero-based" budgets before being able to make initial "gender equity" assessments has been especially evident in the "resource" areas addressed in this Section. Quinnipiac has made a good beginning in these areas, developing significant empirical studies and proposals, and has been responsive to my questions and recommendations, providing information throughout the year including, as requested, comprehensive updates to me and to the plaintiffs on March 31 and April 7.

Given the breadth and the detail of what has been needed in these areas, however, I have anticipated that review of final analyses or proposals will be part of the June Report. I will work with Quinnipiac throughout the spring, and Quinnipiac will report to me and to the plaintiffs about all the topics in this Section on May 16.

I believe the work Quinnipiac has done thus far provides a good basis for having effective approaches and the right results in 2014-15, which has been my primary objective throughout. This Section summarizes Quinnipiac's efforts in each area to

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date, as well as my conclusions at this point (issues specifically relevant to Tier 1 teams were discussed in Section **D-2** above).

a. Equipment/supplies/uniforms –

Quinnipiac is developing department-wide policies, budget approaches and ordering and replacement cycles, based on an extensive initial analysis and coaches survey that includes intended use (e.g., game, practice or travel), whether the item is considered essential or discretionary, quality, frequency of replacement and per-capita cost. This work will be completed and reviewed this spring as the basis for 2014-15 operations and expenditures.

b. Scheduling of games and practice times –

Team and coach interviews in the fall raised questions, for teams based in the Mt. Carmel facility, about issues unrelated to gender equity. These focused not on game and practice scheduling as such, but on the need to accommodate this scheduling to what were viewed (for men as well as women) as limitations in scheduling for training, strength and conditioning and academic support services. As noted variously in this document, Quinnipiac is making changes in each of these areas.

c. Transportation/travel/per diem –

The 2013-14 schedules did not indicate any transportation or travel questions, with most travel by bus and the majority of air travel being done by women's teams (including significant trips for Rugby and Acrobatics & Tumbling given the location of opponents in these sports). Quinnipiac has a per-diem of \$30, with coaches having some flexibility in using meal money as they believe is most appropriate, and a stated expectation of "one-athlete/one-bed".

Quinnipiac's extensive analysis of how coaches use meal money indicated no gender-based patterns, but did suggest that athletes may not understand coaches' discretion in this regard. Quinnipiac is developing more detailed policies in this regard, including references to various NCAA limitations, which will be placed in both the coach/staff and student-athlete handbooks.

d. Access to coaching and tutoring –

My student-athlete and coach interviews did not indicate gender-based concerns with access to or help from the Director of Academic Support; Quinnipiac's extensive review in this area showed that athletic and institutional academic services are used in gender-

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neutral ways reflecting student-athletes' individual academic objectives¹².

The second staff member in this area (above) will be helpful in responding to individual students, especially in scheduling specific services. Quinnipiac also will review expanding space, and thus scheduling opportunities, for academic services that are provided or required through athletics, as opposed to the overall institutional support services that are available to all students, both in 2014-15 and in long-term planning for the Mt. Carmel Center.

My team interviews did make clear the view of many athletes, again without regard to gender, that priority in course registration would help avoid conflicts between academic obligations and practice, travel for away contests and strength and conditioning hours (a view that, in my experience, is common at most institutions). Independently of its efforts under the Decree, Quinnipiac is reviewing this spring's registrations for 2014-15 courses in order to decide whether to pursue such a change.

e. Assignment and compensation of coaches –

I understand the Decree's obligations in this respect to encompass the salary requirements addressed in Section **E-1** and the staffing requirements for Tier 1 teams addressed in Section **D-2**, with which I believe Quinnipiac is complying and which I will continue to review.

f. Medical/training services –

Section V-C-1(c) of the Decree requires Quinnipiac to "provide athletic training coverage to all sports during the traditional and non-traditional seasons" (Section **E-3** above). This fall the Director of Training, with whom I have spoken, did an overall review of possible needs in this area, which Quinnipiac then revised to include both gender equity and tiering considerations. Quinnipiac has committed to hiring two new training staff members for 2014-15 at a cost of \$195,000 (compensation plus benefits); to provide Tier 1 teams with services from a full-time trainer for all practices and home games, and all away contests during the traditional season; and to provide non-Tier 1 teams with coverage using certified graduate assistants and full-time trainers as available.

This is a comprehensive plan that appears to provide adequate coverage for all teams, consistent with the Decree, and also to differentiate appropriately between Tier 1 and non-Tier 1 teams. Review with Quinnipiac this spring will focus on individual team

¹² It is important to note that various academic services are available to student-athletes, as to students generally, at all levels and for a variety of reasons, and are not provided for or used by only student-athletes who may be encountering problems.

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assignments and coverage for away contests.

g. Housing/dining –

Quinnipiac indicates that all athletes have the same meal plans, except that the two basketball teams have additional meal plan funds which are the maximum allowed under the current dining contract (team interviews indicated some uncertainty about which teams have these additional funds, and I have recommended that Quinnipiac clarify this topic for its athletes). Coach and team interviews did not raise concerns either as to regular housing or housing during term breaks.

h. Publicity and sports information –

This area has two components: traditional sports information/communication assignments for teams, through the Director of Sports Information within athletics, and promotional and marketing activities, which currently focus on events at the TD Bank Center and on the teams that play there, and which are administered primarily through the institutional Office of Public Affairs. This fall the Provost commissioned and received an overall sports information review from the Sports Information Director, with whom I also have talked, which also was then revised to specifically address both gender equity and tiering considerations.

Quinnipiac has committed to add a third full-time sports information staff member for 2014-15, recognizing that a fourth full-time staff member would be appropriate if funding were available. With the expectation of the third staff member, Quinnipiac also has produced team assignments that differentiate between Tier 1 and non-Tier 1 teams, using both full-time staff and graduate assistants, and this spring will produce specific sports information and promotion plans for the four new Tier 1 sports.

This work provides a clear starting point for complete and effective services in these areas in a “tier-appropriate” way. My review of the plans this spring will focus on individual team assignments and on plans for individual women’s sports.

I. Recruiting –

Although my coach interviews in the fall did not indicate concerns about recruiting budgeting or support, there has not been an overall athletics policy about recruiting expectations or resources. Quinnipiac has done an extensive review of coaches’ individual practices and approaches, and will combine this work with the anticipated 2014-15 budget data and “tiering” decisions to develop an overall policy and budget approach and to assure appropriate Tier 1 resources. Quinnipiac already has

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determined that this work will consider current resources for “subsidized visits” in teams that do not have NCAA limits on the annual number of such visits, to assure gender-equitable resources in this area.

j. Support services –

Strength and conditioning services are an increasingly essential intercollegiate athletics resource, not only for competitive improvement but as a basis for overall student-athlete health, that is not explicitly identified in the Title IX regulation list on which this portion of the Decree is based. I believe they are central to the best student-athlete experience in any sport, as well as to providing Tier 1 support for specific teams, and they were mentioned consistently in my team and coach interviews in the fall.

Quinnipiac currently provides these services through a head coach who works with the four teams at TD Bank Arena, and who supervises part-time coaches who work with the remaining teams in the Mt. Carmel Center. Quinnipiac has recognized that space limits in the Mt. Carmel Center have limited the hours when these services can be available to “non-Hill” athletes, both male and female, and that “tiering” changes also would require increased services.

This year Quinnipiac asked the head coach to propose changes in staffing, and at my suggestion investigated making more space available in the Mt. Carmel Center in order to increase the times when staff could work with student-athletes. Quinnipiac has committed to hire one additional full-time and one additional part-time coach, at a total cost of \$112,500; to increase the operating budget in this area by \$12,500; and to provide a new 900 square-foot area in the Mt. Carmel center that will be dedicated to these services.

This proposal will significantly benefit athletes on all teams that are housed in the Mt. Carmel Center and also will permit appropriate gender-neutral benefits for both Tier 1 and non-Tier 1 athletes, and I have endorsed it as a “spending recommendation” in Section H below. I will review the proposed team assignments and scheduling with Quinnipiac this spring.

G. Specific Sports

1. Field hockey

V-A-4. Quinnipiac will build a superior practice and competition facility dedicated to women’s field hockey that meets NCAA Division I standards for the sport.

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V-B. The parties recognize that Quinnipiac currently treats men's and women's teams in basketball and ice hockey as tier one sports (also denominated as "sports of emphasis"). Quinnipiac will take measures to elevate two (2) additional women's teams to tier one as follows: [1.] By the beginning of 2013-2014 academic year, Quinnipiac will provide the head coach of the field hockey team with the authority to award the maximum number of athletic scholarships allowed by NCAA rules. By the beginning of the 2014-2015 academic year, Quinnipiac will provide the field hockey team with the maximum number of coaches allowed by the NCAA. Quinnipiac shall also build a superior practice and competition facility dedicated to field hockey as previously set forth herein.

Quinnipiac elevated Field Hockey to Tier 1 status for 2013-14 and has provided the required scholarship and coaching resources, and the head coach indicated in my fall 2013 interview that she was receiving appropriate support. My overall review of support for Tier 1 teams will include field hockey, including another interview with the coach¹³.

2. Women's golf

V-C-1-d. [By no later than the beginning of the 2013-2014 academic year] Quinnipiac will create and fill a full-time position for a head women's golf coach;

The head women's golf coach was made a full-time position in 2011-12; the incumbent is in his third year as head coach.

3. Rugby

II-C-1. Quinnipiac will upgrade the quality and condition of the rugby pitch to ensure that it is safe for practices and competitions. Quinnipiac will make good faith efforts to upgrade the quality of the rugby pitch so that it is level, does not contain holes, dangerous rocks, or other hazards, and is maintained to a quality comparable to the varsity soccer field, by the start of the 2013-2014 academic year.

V-A-2. Quinnipiac will increase the dimensions of the women's varsity rugby pitch to the maximum dimensions allowed by the International Rugby Board.

¹³ The field hockey team was the 2013 MAAC regular-season co-champion and MAAC tournament champion, advancing to the NCAA tournament for the first time since 2002, and Quinnipiac players were selected as the MAAC's Co-Player of the Year and Co-Goalie of the Year.

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II-C-2. Quinnipiac's varsity women's rugby team will have exclusive use of the rugby pitch.

II-C-3. Quinnipiac will authorize the head coach of the women's rugby team to award athletic financial assistance equaling at least nine (9) full scholarships by the 2013-2014 academic year.

II-C-4. Beginning in the 2013-2014 academic year, Quinnipiac will provide one full-time head coach and one full-time assistant rugby coach for its women's rugby team. Neither of the women's rugby coaches will have responsibility for any men's or women's club rugby team or program or for any other sport or activity.

II-C-5. Beginning in the 2013-2014 academic year, Quinnipiac will compete in at least two-thirds (2/3) of its regular season games against NCAA varsity rugby teams (e.g., Eastern Illinois, Harvard, West Chester, Norwich) or Division I club rugby teams (e.g., Brown, Penn State, Princeton, Army, Navy). For purposes of this provision, "Division I club" is intended to mean the highest level of intercollegiate club competition available. In 2014-2015 and thereafter, Quinnipiac will schedule all of its regular season matches against NCAA varsity and/or Division I club rugby teams except that Quinnipiac may schedule one regular season game each season with Yale University and one regular season game each season with the University of Connecticut, regardless of the competitive level of their women's rugby teams, in order to build an in-state rivalry in the sport.

II-C-6. Women's varsity rugby athletes will have access to water and nearby restrooms during all practices and competitions held at Quinnipiac.

Quinnipiac has complied with these requirements; my conversations with the head coach in the fall indicated that she was satisfied with the support she was receiving, and the rugby pitch was improved shortly before the 2013 season. Because the new pitch will not be available until fall 2016, Quinnipiac understands the need for, and has committed to, having the current pitch in appropriate condition in the interim, with input from the coaching staff and beginning work as early as possible each spring/summer season. I will walk the pitch with the coach this spring to obtain her recommendations and will monitor Quinnipiac's plan and actions in this regard.

As part of making clear its support for the rugby team's development, and in response to concerns identified by the head coach in the early fall, I asked Quinnipiac to develop a clear approach to how the Rugby team will be identified and promoted, and to address

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any unauthorized use of Quinnipiac's names and marks related to the New Blue rugby team, whose members are primarily Quinnipiac undergraduates. Quinnipiac has responded as followed:

The official name per the NCAA is "Women's Rugby" and the University will use this name. No other group has authorization to use "rugby" in any way. The University is not in any [way] affiliated with any other rugby related activity. Firms that are Quinnipiac licensees have been notified by the Department of Athletics that they may not use the Quinnipiac name or logos for any rugby activity other than our official Women's Rugby team¹⁴.

*The University monitors and appropriately responds in situations that represent unauthorized use or misuse of logos and we have instructed LRG [Quinnipiac's licensing agent] to pay particular attention to uses that might involve Rugby [see also Section **B-2** above].*

I believe these are appropriate responses and I will continue to monitor this area.

II-C-7. Quinnipiac will make a good faith effort to promote women's rugby as a varsity sport and to encourage other NCAA Division I schools to sponsor women's rugby as a varsity sport with the goal of establishing a Division I varsity women's rugby athletic conference and a NCAA varsity women's rugby national championship.

I have discussed this area with Athletic Director Jack McDonald and with Jeffrey Ward, former athletic director at Bowdoin College who is working with Quinnipiac in this area (below) and who drafted Quinnipiac's report to me. Quinnipiac's efforts include, in summary form:

- * Creating the American Collegiate Rugby Association (ACRA) in spring 2013 to promote collegiate varsity rugby (head coach Rebecca Carlson is a member of ACRA's executive council)¹⁵;
- * Regularly convening athletic directors of all institutions that currently sponsor varsity rugby, in connection with ACRA and engaging Mr. Ward as

¹⁴ The New Blue team's Facebook and Twitter sites no longer identify it as being affiliated with Quinnipiac.

¹⁵ The rugby team's fall 2013 record was 10-2; it reached the quarterfinals of ACRA's inaugural post-season tournament.

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Administrator for ACRA and as staff person for the athletic directors' group;

- * Beginning website and personal contact with college club rugby teams and their institutions' athletic directors, and providing information about moving to varsity status;
- * Continuing to work with the NCAA Committee on Women's Athletics with regard to NCAA "emerging sport" status; and
- * Seeking through all these means to have 20 schools provide varsity status to rugby by fall 2015, with more thereafter, and to obtain NCAA "National Collegiate" (all Divisions) and Division I championship status as soon as the necessary minimum team sponsorships are attained.

I believe these efforts are fulfilling Quinnipiac's obligations and I will continue to review progress in this area, including contact with both Jack McDonald and Mr. Ward.

4. Women's cross-country and track and field

a. Overview

I understand the goal of all the Decree's track and field provisions, taken together, to be expanding Quinnipiac's successful women's cross-country team into a successful overall cross-country and indoor and outdoor track and field program, and I believe substantial progress has been made this year. Achieving this result fully will require coaching and administrative commitment and guidance in many areas, including recruiting, the award of financial aid, scheduling, and overall emphasis.

As I have requested, Quinnipiac will provide in its May 16 report a clear plan for continuing to develop track and field, reflecting all three seasons of competition this year and including appropriate administrative involvement with the coaching staff in scheduling, recruiting (including coaches' travel and "subsidized visit" budgets and geographic scope), the award of financial aid and all other program areas¹⁶. That report also should show that all 10 FTE grants will be awarded in 2014-15 and that their distribution will comply with the expected "4/6" distribution (above) and will support development of a "full" track and field team across all events¹⁷. I expect to involve

¹⁶ Cross-country (women's and men's) and women's indoor and outdoor track and field are the only non-Tier 1 sports that will have the NCAA maximum number of full-time coaches.

¹⁷ NCAA squad lists for cross-country and track and field are a unique reporting

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plaintiffs in review of this plan.

b. Financial Aid

II-B-1. Beginning with the 2013-2014 academic year, Quinnipiac will authorize the head coach of the women's cross country and track & field teams to award athletic financial assistance that equals at least four (4) full scholarships for women's cross country athletes and six (6) full scholarships for women's indoor/outdoor track & field athletes who focus on non-distance events.

Quinnipiac clearly authorized the award of appropriate aid for 2013-14 when the Decree was signed in June 2013, and all the aid was awarded. However the actual 2013-14 aid distribution included 5.0 FTE to non-distance athletes and 5.42 FTE to cross-country/distance athletes, which differed from the Decree.

As in the earlier financial aid discussion (Section **E-2**), in this instance the coach chose to make 2013-14 awards to senior distance athletes when the Decree's increased aid became available in June (2.42 FTE), so the aid would be available in recruiting fall 2014 freshmen, and there was no administrative overview of this decision (there were no senior non-distance athletes on the track squads). It would have been preferable to award aid to non-senior middle distance or sprinter/jumper athletes as the Decree intended, even with the understanding that the aid would not be renewed in 2014-15 so that it would be available to incoming freshmen.

I note this issue only because it was inconsistent with the Decree, however unintentionally, and not as a "violation", and Quinnipiac has made clear that it will not recur.

c. Outdoor Track Access

II-B-2. Quinnipiac will arrange for its outdoor track & field athletes to have access to

problem: the NCAA "counts" each sport independently, with an aggregate number of FTE grants allocated among them, but individual athletes participate in two and sometimes all three of the sports. In order to have reliable squad lists at all times, next year I will ask Quinnipiac to generate lists for all three sports, at the start of each season and then at the end of the year, and to report if athletes are moved between lists or their awards change. Starting this spring Quinnipiac also will generate a preliminary three-sport list in the spring, for the following year, that includes freshman aid commitments and returning-student aid allocations.

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the outdoor track facility at Cheshire High School (or a comparable outdoor track facility) throughout the academic year. The outdoor track & field athletes will practice at the facility on a regularly scheduled basis that is sufficient, in the judgment of the head coach, to allow the athletes to prepare adequately for competition. Quinnipiac will provide transportation for athletes on the track & field team to and from practices conducted at the outdoor track facility. Athletes will have access to onsite water and restrooms during practices.

Quinnipiac has complied with this provision and understands that increases in the number of athletes may require additional transportation support.

d. “Hosted” outdoor meet

II-B-3. Quinnipiac will make its best efforts to host one outdoor track & field meet annually at Yale University (or a comparable facility) beginning in the 2013-2014 academic year. This provision does not prevent Quinnipiac from voluntarily hosting more than one outdoor track & field meet annually.

Quinnipiac indicated in October 2013 a desire to replace the “hosted” meet with an early-season trip to a significant meet in the mid-south. In January 2014 it submitted a specific proposal to use the weekend (April 4-5, 2014) and financial resources that would have supported the hosted meet to compete in the Colonial Relays in Williamsburg, Virginia, sponsored by the College of William & Mary.

The proposal’s position was, essentially, that a “home” meet that is not actually on campus would be difficult to host, and that Quinnipiac did not believe it would be able to secure participation by attractive competitor schools in the northeast in the early spring, and conversely, that travel to a high-quality meet in a warmer location, and use of coaching time to work with athletes rather than to administer the “home” meet, would be better for overall program development.

After considering comments from the plaintiffs, I approved this proposal, with the understanding that the “hosted meet” requirement for next year would be part of this spring’s review and plan for outdoor track and field generally¹⁸.

¹⁸ Quinnipiac finished 28 out of 38 teams at the Colonial Relays, the best finish of the three competing MAAC teams, with 22 athletes competing; see http://www.tribeathletics.com/ViewContent.dbml?SPID=83597&DB_OEM_ID=25100&CONTENT_ID=906272 and <http://www.quinnipiacbobcats.com/sports/wtrack-out/2013-14/releases/201404055u3ru3>, both downloaded April 12, 2014.

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e. Assistant Coaches

II-B-4. By the beginning of the 2013-2014 academic year, Quinnipiac will upgrade one of its part-time assistant track & field coaching positions to full-time. During the term of the Consent Decree Quinnipiac will provide its women's cross country and track & field teams with the maximum number of paid coaches permitted by NCAA rules.

Quinnipiac has complied with this provision.

f. "Track and Field" development generally

II-B-5. Quinnipiac will make good faith efforts to expand the number of events in which the women's track & field athletes compete, including recruiting athletes who focus on non-distance events (e.g., sprints, hurdles, and middle-distance races) and field events.

This area will be a focus of the May report and the 2014-15 plan; the materials that Quinnipiac has provided thus far indicate tangible progress:

* In the 2013-14 sophomore and freshman classes, 12 athletes are categorized as sprinters and jumpers, 5 as middle-distance runners and 9 as distance runners; the comparable figures for seniors and graduate students are 1, 8 and 8 respectively (only 1 student-athlete is a junior).

* Quinnipiac has indicated that "... all of the meets (indoor and outdoor) on the [2013-14] schedule offer sprints and jumps, middle distance and distance events in which QU will compete subject to the athletes' health and performance and competitive strategy."

* Quinnipiac's report of 2013-14 Indoor participation, by event and athlete, showed participation by 10 athletes classified internally as "sprinters" (3 of whom also participated in jumping events), 11 classified as middle-distance runners and 12 classified as distance runners, with broad participation across events in 6 regular-season competitions and the MAAC championship, and performance-based participation in 3 post-season events. A similar report for Outdoor participation will be provided when the season is over.

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* Indoor season results included an individual MAAC championship in the 400 meter dash and New England championships in the 400 meter dash and the 4 x 400 meter relay.

* My team interview in fall 2013 revealed concerns about developing jumpers in the indoor practice facility as it was then configured, which I noted to Quinnipiac, and Quinnipiac then invested \$6,200 for a high jump pit. The May report will include "consideration of whether there are similar issues for other field events in the indoor or outdoor practice facilities."

5. Volley ball

II-A-1. Quinnipiac will not eliminate its women's varsity volleyball team or, during the term of this Consent Decree, announce any plans to eliminate the team. Quinnipiac will support its women's varsity volleyball team in the same manner that it supports other varsity sports in the same tier.

Quinnipiac has reaffirmed its commitment to the "non-elimination" provision, improved lighting in the Burt Kahn practice and competition facility (a point noted in my team meeting in fall 2013), and changed facilities staff responsibilities to provide appropriate support to the team in court setup. I will continue to review support for the volleyball team and consideration of what other changes might be useful to consider in Burt Kahn, including additional meetings with the coach and a facility inspection.

III-D. Quinnipiac will provide an additional athletic scholarship to the women's volleyball team for the 2014-2015 academic year (so that the team then has 7 full athletic scholarships) and another additional scholarship to the women's volleyball team for the 2015-2016 academic year (so that the team then has 8 full athletic scholarships). The number of scholarships authorized for the women's volleyball team will not be reduced before completion of all the facilities required by this Consent Decree.

Quinnipiac has reaffirmed its commitment to these provisions, and understands that the Athletic Department should work with the coach to assure that his recruiting produces suitable scholarship recipients, and that all authorized aid is awarded in the future; I will review this recruiting and these awards for 2014-15 this spring.

H. Spending Recommendations

V-C-3. In addition to the money to be expended pursuant to Section V.C.1, and in

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addition to any other monetary commitment(s) made under this Consent Decree, Quinnipiac will spend up to \$175,000 per year for the term of the Consent Decree for the purpose of ensuring equitable treatment and benefits for female athletes in the following areas. . . . Expenditures pursuant to this paragraph shall be made by Quinnipiac based upon the recommendations of the Referee in accordance with Section V.D.7

V-D-8. The Referee's recommendations made pursuant to subsections V.D.3 and V.D.7 above shall be entitled to substantial deference. Quinnipiac will implement the Referee's recommendations expeditiously unless it believes that they are unreasonable, impractical, or exceed Quinnipiac's obligations under the law or this Consent Decree.

1. Analysis

My goal for these recommendations has been to provide significant direct benefits for as many women athletes as possible and to complement expenditures required by, and/or offset "gaps" or ambiguities in, specific Decree areas (particularly where changes would involve "interim" facilities, as discussed in Section **C** above).

Since my first campus visit I have believed, and have communicated consistently to both parties, that these goals could best be achieved by seeking to eliminate shared locker-rooms (Section **C**, fn. 3 above) and/or by increasing the space available for strength and conditioning activities, and thus increasing the time during which such activities can be scheduled (Section **F** above). As noted already, I believe both these areas are central to the best student-athlete experience in any sport, as well as to providing Tier 1 support for specific teams, and both areas were mentioned consistently in my team and coach interviews in the fall.

I thus asked Quinnipiac, when our work began this summer, to begin considering possible changes in both areas, focused on these areas in my October and January draft Reviews as the likely subject of my final recommendations, and continued discussions with Quinnipiac about these areas throughout the year. As reported in Section **F**, Quinnipiac has developed a significant proposal for reconstructing and reallocating space in the Mt. Carmel Center for strength and conditioning activities that will benefit all the teams that are based in the Center, on a gender-equitable basis, and that will support additional resources in this area for the new Tier 1 teams. It does not presently have a proposal as to locker-rooms.

I also have considered that my recommendations could not be "final" until well into the 2013-14 year, and that Quinnipiac needed to make specific funding decisions

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throughout this year, particularly while new long-term team budgets were being developed. Quinnipiac discussed those decisions with me and itemized them in January 2014 status report, which was shared with the plaintiffs, with the understanding that I would consider including appropriate specific expenditures in these recommendations.

2. Recommendations

Considering all of these factors, my recommendations for the “supplemental” spending are as follows:

1. For 2013-14, I will count as part of these expenditures \$95,000 in new funds that Quinnipiac has spent this year, after discussion with me, including \$67,500 for permanent improvements to the softball field and \$27,500 for travel or indoor practice rentals for women's golf, soccer or tennis (with the expectation that Quinnipiac will include the latter expenditures in regular team budgets in future years if it believes they should be continued).
2. I will ask Quinnipiac to spend the remaining \$80,000 from the 2013-14 allocation, together with the \$175,000 allocation for 2014-15, for facilities and personnel changes that will support improved strength and conditioning access and resources for women athletes and/or will eliminate shared locker-rooms for women's teams (pending completion of permanent construction), effective at the start of 2014-15 and subject to my approval. The starting point for these expenditures will be the proposal described above in Section F¹⁹.
3. Quinnipiac has suggested that the new Gender Equity Committee be involved in finalizing these plans this spring, which I agree will be useful. My expectation is that the June Referee's Report will contain a specific plan for expending the full \$255,000 in 2014-15 and remaining 2013-14 funds in the areas of strength and conditioning and, to the extent feasible, changes in locker-rooms.

¹⁹ As Quinnipiac recognizes, when expenditures will benefit both male and female athletes (e.g., the strength and conditioning improvements), there will be “credit” under this section for the portion of the expenditures that will affect women athletes.