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March 27, 2009

John Lahey, Ph.D.
President
Quinnipiac University
275 Mount Carmel Avenue
Arnold Bernhard Library S-WG
Hamden, CT 06518

Re: Planned elimination of varsity volleyball

Dear Dr. Lahey:

As a cooperating attorney with the American Civil Liberties Union of Connecticut Foundation, I represent athletes and the coach of the Quinnipiac University varsity women's volleyball team. The University recently announced the elimination of their program. This letter seeks dialog leading to the prompt reversal of that decision and restoration of the *status quo ante*.

It is clear from Quinnipiac University's own Equity in Athletics Disclosure Act reports that the University does not comply with Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.). As you probably know, under Title IX athletic participation equity is measured through use of the following three-part test:

- (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 under-represented 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 under-represented among intercollegiate athletes, 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.

1979 OCR Policy Interpretation, 44 Fed. Reg. at 71418(C)(5)(a). See the following cases for examples of the application of the three-part test: *Cohen v. Brown University*, 879 F.Supp. at 204, *aff'd in part* 101 F.3d 155 (1st Cir. 1995); *Favia v. Indiana University of Pennsylvania*, 312 F.Supp. at 584 (W.D. Pa. 1993), *aff'd* 7 F.3d 332 (3rd Cir. 1994); *Roberts v. Colorado Bd. of Ag (Colorado State Univ.)*, 998 F.2d at 824; *Horner v. Kentucky High School Ath. Ass'n*, 43 F.3d 265 (6th Cir. 1994); *Pederson v. LSU*, 213 F.3d 858 (5th Cir. 2000).

Quinnipiac University fails each prong of this test. First, according to its own EADA reports, the University historically has had a female enrollment of around 62% but has had a female athletic participation rate of only 50%. Given the discrepancies between the University's EADA reports and its team rosters, the actual numbers are likely even more disparate.¹ (We are investigating allegations that the University has intentionally manipulated rosters to distort its compliance statistics.) Even if the University drops men's track and men's golf along with women's volleyball, its numbers still will not reach substantial proportionality.

Second, the University has not added any women's teams in over 10 years - despite having actual knowledge of its Title IX shortcomings (see 2006 NCAA certification self-study). Thus, it does not have a history or continuing progress of expanding women's programs. Of course, the elimination of the women's volleyball team makes it impossible for the University to rely on the second prong of the three-part test in any event. *Cohen*, 809 F.Supp. at 987; *Roberts*, 814 F.Supp. at 1514 (prong 2 requires expansion of women's opportunities, not the reduction of men's opportunities).

Third, there obviously are current female students with the interest and ability to play varsity volleyball, because they have been doing so for many years - and the coach (who was assured when she began recruiting the class of 2012 that the program was "safe" for at least four years) has already recruited freshmen for next year's team. Moreover, if the University were to survey its current and prospective student body, we believe female students would show interest and ability to participate in more sports.

In sum, Quinnipiac University does not provide its female students with an equal opportunity to participate in varsity athletics. The University's own EADA reports and NCAA certification self-study indicate that the University knows it violates the law. Yet, instead of remediating the violations, it has chosen to exacerbate them by eliminating women's volleyball.

¹ For example, the 2007-2008 EADA report appears to overstate the number of female athletes by more than 35, while understating the number of male athletes (compared to the actual team rosters). This discrepancy violates both the EADA (20 U.S.C. §1092(g)), and 34 C.F.R. 106.3, which requires that the University swear that it complies with Title IX as a condition of its receipt of federal funds).

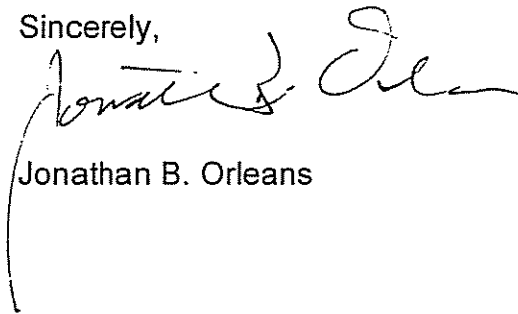
PULLMAN & COMLEY, LLC
ATTORNEYS AT LAW

The volleyball team and coach obviously have strong legal claims against the University. Every day without restoration of the volleyball program to its prior status causes significant harm to the athletes, the coach, and the program, increasing their damages under *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992). Thus, please respond to this letter by April 1, 2009. If the matter is not promptly resolved, the team and coach may pursue their legal remedies.

Please note that under 34 C.F.R. §100.7(e) and *Jackson v. Birmingham Bd. of Ed.*, 544 U.S. 167 (2005), it is illegal to retaliate against anyone who complains about Title IX violations. Please advise your staff that retaliation against volleyball athletes, coach, and anyone who assists them will not be tolerated.

If you choose to refer this matter to legal counsel, please let me know immediately so that I may pursue future discussions with him/her.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan B. Orleans". The signature is written in a cursive style with a large initial "J" and "O".

Jonathan B. Orleans

JBO/md