

Appendix D. Whistleblower and Anti-Retaliation Policy

Date of adoption / Last Revision: January 28, 2023

PURPOSE: The purpose of this Whistleblower and Anti-Retaliation Policy (the “Policy”) is to

- (i) encourage and provide a mechanism for USA Swimming, Inc. (“USA Swimming”) Board members, officers, employees, members, athletes, committee members, task force members, hearing panel members, and volunteers (“Covered Individuals”) to report alleged Retaliation (defined below);
- (ii) encourage cooperation in inquiries and investigations of reported Retaliation;
- (iii) protect Covered Individuals, including any good faith reporter or other reasonable party (e.g. witnesses, victims, etc.), from (a) intimidation or threats to prevent good faith reporting of violations under the jurisdiction of USA Swimming’s National Board of Review (“NBOR”), the USA Swimming Board of Directors, the U.S. Olympic & Paralympic Committee (the “USOPC”), the U.S. Center for SafeSport (the “Center”), law enforcement or other governmental or administrative body (b) Retaliation for good faith reporting of alleged violations, or (c) any other form of Retaliation; and
- (iv) encourage individuals to report any alleged Violations¹ in good faith, as well as alleged Retaliation described in (iii).

Additionally, where reasonable, contractors shall be required to comply with this Policy in their written contracts.

RETALIATION: No Covered Individual shall suffer harassment, intimidation, adverse employment or livelihood consequences, or any other form of retaliation (“Retaliation”) for (i) making a good faith report of a Violation to USA Swimming, the USOPC, the Center, law enforcement or other governmental or administrative body; or (ii) participating in an investigation by USA Swimming, the USOPC, or the Center, or an inquiry or investigation by any court, law enforcement, or other governmental or administrative body. “Retaliation” also includes retaliation as described in Article 307 of the USA Swimming Rulebook² and the definition of retaliation included in Section 220501(b)(11) of the Ted Stevens Olympic and Amateur Sports Act (the “Act”).³

Additionally, no employee, contractor, agent, volunteer, or USA Swimming itself shall take or threaten to take any action against an athlete as a reprisal for disclosing information to or seeking assistance from the Office of the Athlete Ombuds as outlined in Section 220509(b)(5) of the Act.

REPORTING PROCEDURE: Covered Individuals are required to report (in good faith) Retaliation to USA Swimming’s Ethics Committee, at the following email address: ethicscommittee@usaswimming.org. Reports may be submitted anonymously (though it may be more difficult to investigate anonymous reports). As members of the Ethics Committee, the following individuals will receive any reports sent to the Ethics Committee’s email address: a 10-Year Athlete

¹ Violations covered under this Policy include, but are not limited to, compliance with the Act, the USOPC Bylaws and policies, USA Swimming’s Bylaws, policies, and procedures, and state and federal laws (“Violations”).

² ARTICLE 307 PROHIBITIONS AGAINST RETALIATION FOR GOOD FAITH REPORTING OF ABUSE

307.1 No Member shall retaliate against any individual who has made a good faith report under 306.1 or 304.3.14.

307.2 For the purposes of 307.1, there shall be a rebuttable presumption that any adverse action regarding the employment, membership, or other material rights of an individual who has made a good faith report under 306.1 or 304.3.14 within 90 days of a report is retaliatory. An adverse action includes, without limitation: discharge or termination; demotion or reduction in compensation for services; or the removal of or from, or restrictions on, access to facilities, team activities or team membership privileges.

³ “[A]ny adverse or discriminatory action, or the threat of an adverse or discriminatory action, including removal from a training facility, reduced coaching or training, reduced meals or housing, and removal from competition carried out against a Protected Individual as a result of any communication, including the filing of a formal complaint, by the Protected Individual or a parent or legal guardian of the Protected Individual relating to the allegation of physical abuse, sexual harassment, or emotional abuse, with the U.S. Center for SafeSport; a coach, trainer, manager, administrator, or official associated with the USOPC; the United States Attorney General; a federal or state law enforcement authority; the Equal Opportunity Employment Commission; or Congress.” Section 220501(b)(11) of the Act.”

representative of the Board of Directors, an Independent¹ Board Member, a Semi-Independent² member of USA Swimming, and USA Swimming's Secretary & General Counsel.

Covered Individuals are also required to report Violations to the appropriate party with jurisdiction over the Violation (e.g., the NBOR, the USOPC, etc.). Knowingly making a false report is also a Violation of this Policy and must be reported by any Covered Individual as such.

All athlete safety Violations must be reported; however, complaints of Retaliation that fall under the exclusive jurisdiction of the Center should be directed to the Center. Nothing in this Policy replaces or changes an individual's obligations under the SafeSport Code for the U.S. Olympic and Paralympic Movement. If the Ethics Committee receives a complaint that may fall under the Center's jurisdiction, it must send the complaint to USA Swimming's Program Director, Safe Sport, who will confirm whether the Center has exclusive jurisdiction over the matter and, if so, will make a report with the Center.

INVESTIGATION: Upon receipt of a filed complaint, the Ethics Committee shall promptly perform an initial inquiry and, as appropriate, initiate an investigation of reports of Retaliation. A complaint may not warrant investigation following an initial inquiry if, for example, the Ethics Committee determines that it does not have jurisdiction over the matter under this Policy, if there is insufficient evidence, or if the reporting party declined to participate in the initial inquiry. If a member of the Ethics Committee is allegedly involved in or witness to the Retaliation, they will recuse themselves from the investigation.

After the initial inquiry and investigation are complete, the Ethics Committee may decide to initiate a complaint in the name of the Ethics Committee by filing the complaint with the NBOR Chair and requesting a hearing. If the Ethics Committee does not decide to initiate a complaint following an investigation, it may advise the complaining party that, while the Ethics Committee will not initiate a complaint in its own name, the complaining party may still file their complaint directly with the NBOR Chair. If the complaining party chooses to go forward with the complaint, the NBOR Chair may then decide to either assign the matter for hearing or dismiss the complaint. Following a hearing and decision of the NBOR, any real party in interest may appeal any decision of the NBOR pursuant to Article 407 of the Rulebook.

USA Swimming may discipline (up to and including by termination of employment or other association with USA Swimming) a Covered Individual for any such Retaliation. A Covered Individual making a report of a Retaliation in bad faith may be subject to disciplinary action.

The Ethics Committee should coordinate with USA Swimming's Manager, Human Resources, Payroll & Benefits if it receives any allegations of retaliation involving employees. If during an investigation, the Ethics Committee finds that an employee has retaliated against a "Protected Individual",⁴ the Ethics Committee must immediately report the retaliation to USA Swimming; USA Swimming must immediately terminate or suspend that individual without pay as required by Section 220509(c)(2) of the Act.

CONFIDENTIALITY: All such reports will be treated as confidentially as possible, given that there may need to be some disclosure to conduct the investigation. For example, USA Swimming may need to waive confidentiality under this Policy based on legal reporting requirements.

Contact Information for the Office of the Athlete Ombuds

Phone: 719-866-5000

Email: ombudsman@usathlete.org

Website: usathlete.org

USOPC Integrity Portal

Website: <https://secure.ethicspoint.com/domain/media/en/gui/53006/index.html>

[Back to Table of Contents](#)

⁴ As defined by USA Swimming Bylaw 4.6.4.

⁵ As defined by USA Swimming's Rules & Regulations.