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## Appendix D. Whistleblower and Anti-Retaliation Policy

Date of adoption / Last Revision: May 4, 2025

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### I. Purpose

The purpose of this Whistleblower and Anti-Retaliation Policy is to encourage Covered Individuals to report Violations (defined below) of certain rules and laws, to make Covered Individuals aware of their right to report Violations, and to protect Covered Individuals from retaliation for reporting such Violations and participating in subsequent investigations and adjudicatory proceedings.

### II. Definitions

“Covered Individuals” are USA Swimming, Inc. (“USA Swimming”) members, including Board members, officers, employees, athletes, officials, committee and task force members, hearing panelists, and other volunteers. This definition includes USA Swimming members who are good faith reporters or other reasonable parties (e.g., cooperating witnesses and survivors). Where reasonable, contractors may be required to comply with this Policy through their written contracts with USA Swimming.

“Retaliation” is harassment, intimidation, threats, false reports of Violations, adverse employment decisions, and actions affecting one’s livelihood. This also includes the definitions of “retaliation” in the Ted Stevens Olympic & Amateur Sports Act (the “Act”),<sup>1</sup> the SafeSport Code for the Olympic & Paralympic Movement,<sup>2</sup> and the USA Swimming Rulebook.<sup>3</sup>

“Violations” are defined as reported allegations to USA Swimming (or a USA Swimming club or Local Swimming Committee), the U.S. Olympic & Paralympic Committee (the “USOPC”), the U.S. Center for SafeSport (the “Center”), or law enforcement of:

- A Covered Individual’s non-compliance with
  - o The Act;

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<sup>1</sup> “[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.

<sup>2</sup> “Retaliation is any adverse action or threat to take any adverse action against any person related to allegations of Prohibited Conduct. Adverse actions include, but are not limited to: threatening, intimidating, harassing, coercing, or any other action or conduct with the potential effect of dissuading any reasonable person from reporting Prohibited Conduct or engaging in activity related to any reporting or investigative processes. Retaliation may take place at any time, including before, during, or after an individual’s reporting or engagement in the processes of the Center or other relevant organization under the Center’s jurisdiction. Retaliation may be present even where there is a finding that no violation occurred. Retaliation does not include good-faith actions lawfully pursued in response to a report of a Code violation.”

Note: Nothing in this Policy replaces or changes an individual’s obligations to report violations under the SafeSport Code for the Olympic & Paralympic Movement or to law enforcement under mandatory reporting laws.

<sup>3</sup> **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.

- USOPC bylaws and policies;
- The rules and policies of the Center, including athlete safety violations;
- USA Swimming's bylaws, policies, and procedures, including athlete safety violations;
- A Covered Individual's potential violation of federal, state, and local laws; and
- A Covered Individual's alleged accounting and financial fraud or malfeasance.

### **III. Prohibited Conduct**

The following conduct is prohibited and subject to the jurisdiction of the USA Swimming Ethics Committee:

- Retaliation by Covered Individuals against other Covered Individuals (including cooperating witnesses and survivors) for reporting Violations and/or participating in investigations or adjudications of Violations.
- Bad faith reports (i.e., knowingly making a false report) by Covered Individuals of Violations by Covered Individuals.
- Actions or threats by an employee, contractor, agent, or volunteer, or USA Swimming, 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.

### **IV. Reporting Procedure**

Reports of Prohibited Conduct should be made to USA Swimming's Ethics Committee, at the following email address: [ethicscommittee@usaswimming.org](mailto:ethicscommittee@usaswimming.org). Reports may be submitted anonymously (though it may be more difficult to evaluate anonymous reports). As members of the Ethics Committee, the following individuals will receive reports sent to the Ethics Committee: a 10-Year Athlete representative of the Board of Directors, an Independent<sup>4</sup> Board Member, a Semi-Independent<sup>5</sup> member of USA Swimming, and USA Swimming's Secretary & General Counsel.

Covered Individuals are required to report Prohibited Conduct to the Ethics Committee. Covered Individuals are also required to report Violations to the appropriate party with jurisdiction over the Violation (e.g., the USOPC, the World Aquatics Integrity Unit, law enforcement, etc.).

Specifically, complaints of Prohibited Conduct under the exclusive jurisdiction of the Center must be directed to the Center. If the Ethics Committee receives a complaint that may fall under the Center's jurisdiction, it must send the complaint to USA Swimming's Safe Sport Department, which will first report the matter to the Center. If the Center accepts jurisdiction, the Center will handle the matter and USA Swimming will have no ability to inquire further into the complaint; in that instance, the Ethics Committee will consider the matter closed. If the Center declines the matter back to USA Swimming, the Ethics Committee will have jurisdiction over any Prohibited Conduct under this Policy. To ensure that all inquiries and investigations are conducted by disinterested parties, if a member of the Ethics Committee is allegedly involved in or witness to the matter, they will recuse themselves.

### **V. Inquiry & Investigation**

Upon receipt of a complaint, the Ethics Committee shall conduct an initial inquiry and, if appropriate, initiate an investigation of reports of Prohibited Conduct. The initial inquiry and/or investigation may include the following steps, among others: (1) a review of relevant documentation or policies, and/or: (2) interviews

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<sup>4</sup> As defined by USA Swimming Bylaw 4.6.4.

<sup>5</sup> As defined by the USA Swimming Rulebook.

with the witnesses. The Ethics Committee may close a complaint at the initial inquiry stage. 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 an investigation is conducted, once complete, the Ethics Committee may decide to initiate a complaint in the name of the Ethics Committee by filing the complaint with the National Board of Review (“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. The Ethics Committee may share its findings/closure 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. The NBOR may impose any sanctions within its authority, per the USA Swimming Rulebook. Following a hearing (which must be before a panel with the requisite athlete representation requirements) and decision of the NBOR, any real party in interest may appeal any decision of the NBOR pursuant to Article 407 of the Rulebook.

The Ethics Committee should coordinate with USA Swimming’s Human Resources Department if it receives any allegations of Prohibited Conduct involving employees. USA Swimming may discipline (up to and including termination of employment or other association with USA Swimming) a Covered Individual for any such Prohibited Conduct. If during an investigation, the Ethics Committee finds that an employee has Retaliated (as defined by the Act) against a “Protected Individual,”<sup>6</sup> 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.

## **VI. Confidentiality**

All 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.

## **VII. Additional Resources**

Contact information for individuals who are responsible for the Policy and enforcement of the Policy:

- Michelle Steinfeld, Secretary & General Counsel: [msteinfeld@usaswimming.org](mailto:msteinfeld@usaswimming.org)
- [Ethicscommittee@usaswimming.org](mailto:Ethicscommittee@usaswimming.org)

Contact information for the Office of the Athlete Ombuds:

- Phone: 719-866-5000
- Email: [ombudsman@usaathlete.org](mailto:ombudsman@usaathlete.org)
- Website: [usaathlete.org](http://usaathlete.org)

USOPC Integrity Portal:

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

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<sup>6</sup> As defined by the Act.