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VIA EMAIL

July 30, 2018

The Honorable Greg Walden
Chairman
Subcommittee on Oversight & Investigations
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Harper:

I am writing on behalf of USA Swimming in response to your July 13, 2018 letter requesting responses to questions from the Subcommittee following the Subcommittee's May 23, 2018 hearing entitled, "*Examining the Olympic Community's Ability to Protect Athletes from Sexual Abuse.*" The enclosed information, attached as Appendix A to this letter, contains USA Swimming's written responses to the Subcommittee's questions for the record.

In responding to the Subcommittee's questions at the May 23 hearing, I used my best efforts to be as accurate and responsive as possible based on my knowledge and recollection of the facts. Similarly, in responding to the Subcommittee's questions for the record, USA Swimming has used its best efforts to be as accurate and responsive as possible based on its understanding of the terms used in your letter. The representations herein are based on reasonably available information and are not intended to, and do not, capture every event related to the Subcommittee's questions for the record, nor are they an exhaustive description of the events discussed.

Thank you for your consideration of this submission, as well as the opportunity to testify before the Subcommittee on these issues.

Best regards,

A handwritten signature in black ink, appearing to read "Tim Hinchey III".

Tim Hinchey III
USA Swimming Chief Executive Officer

cc: The Honorable Diana DeGette

Enclosure

Appendix A

USA SWIMMING'S RESPONSE TO THE SUBCOMMITTEE'S REQUESTS DATED JULY 13, 2018

USA Swimming submits the following in response to the Subcommittee's Questions for the Record.

The Honorable Gregg Harper

1. **According to various reports, some NGB members that have been accused of sexual abuse have been allowed to continue coaching or competing, and having contact with minor athletes, even while they are under investigation. The purpose of interim measures is to prevent an alleged abuser from continuing the pattern of abuse during the period of time in which that individual is under investigation. Is it your practice to take an interim measure, such as suspending the member, while that individual is under investigation?**

USA Swimming has taken interim measures based on allegations of child sexual abuse.

- a. **If so, what are the types of interim measures that might be used and what determines which type of interim measure is used?**

USA Swimming's rules permit an emergency hearing to be held after an initial investigation has been completed to determine if a member should be suspended pending the outcome of a full hearing. This type of temporary suspension is the most common interim measure employed by USA Swimming, as well as the most effective way the organization can ensure that an individual who has been accused of sexual abuse cannot continue participating. However, the Center now has exclusive authority to investigate sexual abuse allegations, so the circumstances in which USA Swimming would conduct an initial investigation and emergency hearing are limited.

- b. **If an allegation is turned over to the U.S. Center for SafeSport (the Center), what authority does USA Swimming have to implement interim measures while the Center investigates?**

According to the Center's current SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement, "Nothing in these *Procedures* prevents the Office, LAO, NGB or USOC from taking appropriate interim measures upon notice of an imminent threat of harm. In such emergency circumstances, it may be appropriate to immediately remove a Covered Individual to address such a threat."

It is our understanding that the Center is considering updating those Procedures to prevent an NGB from imposing an interim suspension once the Center has provided notice to an NGB that it is exercising jurisdiction over the matter.

- i. **Does the nature of the interim measure adopted differ based on whether the NGB or the Center is conducting the investigation?**

USA Swimming no longer investigates allegations of child sexual abuse, as they fall under the exclusive authority of the Center. To the extent that USA Swimming may investigate another type of abuse or misconduct (e.g., physical abuse, bullying, harassment, hazing, etc.), the interim measure adopted may differ. For example, USA Swimming has worked with its member clubs to impose safety planning in instances of peer-to-peer bullying that did not involve a suspension of membership.

c. Is some measure taken in every case, or is this determined on a case by case basis? If a measure is not taken in some cases, why not?

Whether or not to take an interim measure is determined on a case by case basis. Like the Center, USA Swimming will consider whether an interim measure would help ensure the safety and well-being of the victim(s) or other athletes. The decision is also impacted by a number of other factors, including available information and the action (or inaction) by the Center. For example, if an allegation has been reported directly to the Center, USA Swimming may not immediately be privy to the identity of the alleged offender, whether or not he/she is still participating in sport, the nature of the allegations, etc. and therefore unable to assess whether or not an interim measure is appropriate. In those circumstances, the NGB must defer to the judgment of the Center and whether or not it has taken an interim measure.

d. If an interim measure is imposed, how quickly are such interim measures implemented?

USA Swimming's rules require that an emergency hearing be conducted to determine whether an interim suspension should be imposed on a member and that the hearing results be issued within 21 days of when the hearing was ordered. If an emergency hearing results in an interim suspension, the suspension takes effect immediately.

e. Whose responsibility is it to enforce the interim measures? What are the potential consequences if an interim measure is not adequately enforced?

USA Swimming provides notice of an interim measure, including a suspension of membership, to the applicable local level entities (the member club, the regional organization responsible for member registration, etc.). Those entities then share USA Swimming's responsibility to ensure interim measures are being enforced. USA Swimming's Code of Conduct prohibits a member club or coach to knowingly: (i) allow any person who has been sanctioned with a membership suspension by the Center or USA Swimming to coach or instruct any of its athlete members; (ii) aid or abet coaching or instruction of athletes by any person who has been sanctioned with a membership suspension by the Center or USA Swimming; or (iii) allow any person who has been sanctioned with a membership suspension by the Center or USA Swimming to have an ownership interest in such member club or its related entities, so a failure of applicable local level entities to enforce the interim measure (i.e., suspension) may result in a suspension of their own respective memberships.

2. During the hearing, Representative Costello asked you what types of background check results would lead USA Swimming to deny or terminate an individual's membership. Can you please clarify any policies or procedures that USA Swimming

has regarding background checks on any individuals associated with USA Swimming (e.g., athletes, coaches, volunteers, etc.)?

USA Swimming's criminal background check program identifies all criminal activity reportable under applicable state and federal law and available through relevant databases. However, only certain offenses result in automatic or potential disqualification, and they are set forth in the USA Swimming Criminal Background Check Policy¹.

Automatic disqualifiers include the following offenses:

- (1) Any felony involving:
 - a. Violence against a person;
 - b. Violent crimes involving weapons (including armed robbery and aggravated assault with a weapon);
 - c. Animal abuse or animal neglect
- (2) Any felony or misdemeanor involving:
 - a. All sexual crimes (excluding only those potential disqualifiers provided in 3c below);
 - b. Drug use or possession, (including the use of drug paraphernalia) within the previous 3 years;
 - c. Other drug related crimes including drug distribution, intent to distribute, manufacturing, trafficking;
 - d. Child endangerment, neglect or abuse.

Potential disqualifiers include the following offenses:

- (1) Other felonies not included in Automatic Disqualifiers above;
- (2) Crimes involving vehicular bodily harm;
- (3) Other misdemeanors for:
 - a. Drug related crimes which are not covered in Automatic Disqualifiers above;
 - b. Violence against a person (including crimes involving firearms);
 - c. Prostitution, indecent exposure, and public indecency;
 - d. Stalking or harassment;
 - e. Destruction of property, including arson, vandalism, and criminal mischief;
 - f. Animal abuse or neglect.

All non-athlete members of USA Swimming (e.g., coaches, officials, those having frequent and direct contact with athletes) must complete a criminal background check.

USA Swimming also conducts criminal background checks on athletes in limited circumstances. Pursuant to the USA Swimming National Office Athlete Protection Policy, "All athlete representatives assigned or appointed by USA Swimming to serve as an athlete representative on a USA Swimming-selected team, training camp, or other similar activity shall be subject to social network and Google media searches, and in the event the athlete representative is 18 years of age or older, a criminal background check. For the avoidance of doubt, athletes

¹ This policy is publicly available at: https://www.usaswimming.org/docs/default-source/safe-sportdocuments/3.-complete-requirements/a.-initiate-a-background-check/usa-swimming_background-check-program-summary.pdf?sfvrsn=3.

competing on behalf of USA Swimming in international or protected competition do not constitute ‘athlete representatives’ for purposes of this section.”² For example, a current adult National Team member may be invited to speak with athletes at a National Junior Team camp. The National Team member constitutes an athlete representative and would be subject to a criminal background check; however, the National Team member is not a camp participant (i.e., not training in the pool).

The Honorable Chris Collins

1. **Non-disclosure agreements are widely used in business resolutions, and serve as useful tools in not only creating confidential relationships between parties, but also protecting certain confidential and proprietary information. Whether it be unilateral or multilateral, they vary in nature -protecting trade secrets and intellectual property, formalizing a relationship between collaborating organizations, or serving as an added layer when resolving disputes between individuals and entities. Within the Olympic community, various news sources revealed some sexual assault victims are bound by NDAs as part of their settlement agreement. One of the most widely publicized instance is the case of Olympic gold medalist, McKayla Maroney, who signed an NDA with USA Gymnastics in late 2016. However, USA Gymnastics chose not to seek action against Maroney when she breached her NDA earlier this year by speaking at the sentencing hearing of serial child molester, Larry Nassar. I would like to better understand the driving factors in NDA utilization within the Olympic community, as it may be indicative of protecting the brand and management more so than treating the problem at its source - stopping sexual abuse.**
 - a. **How many NDAs has your organization entered into since 2005 and when was the most recent NDA or settlement entered into? Of those NDAs, how many were minors at the time of the dispute?**
 - b. **As to the nature of these NDAs or settlements, do the agreements prohibit the victim from speaking about the details of the settlement - such as the amount of any financial award - or do they prohibit the victim from speaking about the details of the case - such as the fact that they were abused, where and when the abuse occurred, who their abuser was, etc.? Are any of these NDAs entered into in lieu of the responding party being given appropriate sanctions, such as being suspended or banned from the NGB?**

USA Swimming has been a defendant in civil litigation relating to allegations of abuse made by athletes. Some of those matters were resolved through agreements between or among the parties. Those agreements typically contain confidentiality provisions that apply to the terms of the agreement (or often just the settlement amount); however, such confidentiality provisions typically do not apply to the athletes’ abilities to discuss publicly their experiences.

² This policy is publicly available at: <https://www.usaswimming.org/docs/default-source/policy-manual-public/section-20-safe-sport-athlete-protection-post.pdf?sfvrsn=7>.

Upon current information and belief, since 2005, USA Swimming was a party to or was made aware of one such agreement in 2010, two in 2011, four in 2012, one in 2013, seven in 2014, one in 2015, two in 2016, none in 2017, and most recently one in 2018. Of those, six agreements were entered into with the swimmer's parent(s) because the swimmer was a minor at the time of the agreement. One such agreement (2010) includes a provision restricting the swimmer's ability to discuss publicly the details of the case. These agreements were not entered into in lieu of the responding party being given appropriate sanctions.³

The Honorable Frank Pallone, Jr.

- 1. USA Swimming created its own SafeSport program in 2010 to foster "a healthy, safe and inclusive environment." Still, in each year since 2010, USA Swimming has received multiple reports of sexual misconduct. For example, the documents you submitted to the committee indicate that there were 18 reports in 2015; 12 reports in 2016; and 16 reports in 2017. Has USA Swimming conducted a thorough examination to understand why the number of reports of abuse has not declined since 2010? If so, what has USA Swimming learned?**

USA Swimming has not conducted an examination regarding the number of reports of abuse it has received since 2010.

- 2. USA Swimming commissioned the Gunderson National Child Protection Training Center to review the USA Swimming SafeSport program in 2013. You received a report from Gunderson on 2014, and follow-up Progress Updates in 2015 and 2017. The 2017 Progress Update included several recommendations that had not yet been implemented, such as requiring all children and parents to take Safe Sport training, placing a Safe Sport coordinator in every club, and developing a pool of medical and mental health treatment experts. Has USA Swimming implemented these recommendations? If not, why not, and what is the timetable for full implementation?**

USA Swimming continues to make progress implementing the 52 recommendations contained in the Gunderson report. In particular, requiring all children and parents to take Safe Sport training and having a Safe Sport coordinator in every club fall under the Safe Sport Recognized Club program, which is set to launch by October 2018. Many children and parents already have received Safe Sport training and many clubs already have a Safe Sport coordinator, but the Safe Sport Recognized Club program will track and standardize these expectations. Initially, certain Safe Sport Recognized Club criteria will be optional (except for those components already required by USA Swimming Rules) before ultimately becoming mandatory.

USA Swimming has not yet developed a pool of medical and mental health treatment experts to use as a resource and is instead identifying those individuals on a case by case basis. However,

³ USA Swimming considers the information contained in this response to be highly confidential and sensitive in nature and respectfully requests advance notice of any contemplated disclosure of this information, as well as a reasonable opportunity to raise any concerns or objections.

USA Swimming is exploring various athlete wellness initiatives and will likely incorporate this recommendation into a broader initiative that extends beyond Safe Sport.

- 3. Before USA Swimming commissioned the Gundersen National Child Protection Training Center, USA Swimming requested that Praesidium and Child Welfare League to produce comprehensive athlete protection education programming. How many studies were conducted on sexual misconduct previous to Gundersen? Please summarize the findings of those studies.**

USA Swimming created its Safe Sport program in 2010. In the program's inception and development, USA Swimming consulted a number of leading subject matter experts and resources, including Praesidium and the Child Welfare League. However, the Gundersen report commissioned in 2013 and completed in 2014 was the first comprehensive assessment of USA Swimming's Safe Sport program. We are currently initiating a review and assessment of our Safe Sport educational content, which we anticipated will be completed in the next three to six months.