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## 19.0 Athlete Inclusion, Competitive Equity, and Eligibility Policy

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### 1. Purpose

The USA Swimming Athlete Inclusion, Competitive Equity, and Eligibility Policy (this “Policy”) is based on the objectives of inclusion, non-discrimination, fair play, participants’ health and safety, and protection of privacy.

### 2. Application of this Policy

This Policy shall apply to all athletes who wish to compete in a competition category (e.g., Male or Female) different than the biological gender assigned to the athlete at birth, including without limitation:

- Current athlete members of USA Swimming who wish to change the competition category in which they participate;
- Former athlete members of USA Swimming who wish to join USA Swimming and compete in a competition category which is different than the competition category in which the athlete was previously registered;
- Athletes who have never been members of USA Swimming who wish to join USA Swimming as a member and register in a competition category different than the biological gender assigned to the athlete at birth; and
- Athletes who wish to be eligible to compete in an “Elite Event” (as defined below) or to set USA Swimming National Age-Group Records in the 13-14 age group and above or who wish to be eligible to set an American Record, per the USA Swimming Rules & Regulations, in a competition category which is different than the biological gender assigned to the athlete at birth.

All athletes to whom this Policy applies shall promptly notify the USA Swimming Senior Director, Legal & Membership Affairs of their desire to either change their competition category or that the athlete is joining USA Swimming and registering in a competition category different than the biological gender assigned to the athlete at birth. (This, and other personal information related to gender transition, information shall be kept confidential as provided in Paragraph 9.)

### 3. Female-to-Male Transition

Athletes who have transitioned, or are transitioning, from a Female biological gender assignment at birth to a Male gender assignment must, before being declared eligible to compete in the Male competition category, satisfy the Self-Identity Verification set forth in Paragraph 5 below.

### 4. Male-to-Female Transition

Athletes who have transitioned, or are transitioning, from a Male biological gender assignment at birth to a Female gender assignment must, before being declared eligible to compete in the Female competition category:

- (a) Satisfy the Self-Identity Verification set forth in Paragraph 5 below.
- (b) Satisfy the conditions set forth in Paragraph 6 below, “Elite Event Fairness Conditions” if the athlete:
  - i. Has achieved “Elite Athlete” status as defined in Paragraph 4(c) below;
  - ii. Desires to compete in an “Elite Event” as defined in Paragraph 4(c) below; and/or
  - iii. Desires to have a competitive time recognized by USA Swimming as an American Record.
- (c) “Elite Athletes” and “Elite Events”. For purposes of this Policy, “Elite Athletes” shall include any athlete who has achieved a USA Swimming Junior National time standard and desires to participate in any of the following “Elite Events” defined for purposes of this Policy as: any United States Olympic and Paralympic Committee (“USOPC”) Delegation Event and/or Protected Competition as

defined in the USOPC Bylaws; Fédération Internationale de Natation (“FINA”) Events; PanPacific Championships; World University Games; USA Swimming Nationals, Junior Nationals, U.S. Open, International Team Trials, U.S. Olympic Team Trials - Swimming; and/or any other competition designated by USA Swimming as an “Elite Event” and any other event which conditions entry on meeting the USA Swimming Junior National Time Standard or faster. For purposes of this Policy, Elite Events shall also include any other competition in which a qualifying time standard is achieved for entry into the other Elite Events described above or to be eligible to set an American or National Age-Group Record at the 13-14 level or above.

## 5. Self-Identity Verification

(a) Purpose. The purpose of Self-Identity Verification is to confirm that the athlete’s transition to a competition category different than that assigned at birth is bona fide and that the gender identity applicable for purposes of swimming competition is consistent with the athlete’s gender identity in everyday life.

(b) Process. To initiate the Self-Identity Verification process, an athlete must submit a Self-Identity Verification Request (the “Request”) to the USA Swimming Senior Director, Legal & Membership Affairs (<https://fs22.formsite.com/usaswimming/Self-Identity/index.html>) at least thirty (30) days prior to the start of the first competition in which the athlete seeks to compete in the requested competition category. The Director may take any of the following actions:

- i. Administratively approve or deny the Request (where such denial will be sent to a panel, as described below in Paragraph 5(b)(iii));
- ii. Seek additional information from the athlete prior to approving, denying, or referring the Request to the panel described below in Paragraph 5(b)(iii); or
- iii. Refer the decision on whether the Request should be approved to a three-person panel consisting of a physician with experience in gender identity issues, a 10-Year Athlete representative, as defined in the USA Swimming Rules and Regulations and appointed by the USA Swimming Athletes’ Advisory Council, and a member of the USA Swimming Safe Sport Committee appointed by the Safe Sport Committee Chair (the “Self-Identity Panel”). The Self-Identity Panel may also seek additional information from the athlete before reaching a decision on whether to approve the Request. In the event the Request is denied by the Senior Director, Legal & Membership Affairs, or in the event the Senior Director, Legal & Membership Affairs has a conflict of interest, the Request will be sent to the Self-Identity Panel for review.

(c) Return to Previous Gender Category. Once an athlete’s Request has been approved, the athlete may not initiate the process to change back to a prior competition category for one year following the date the initial Request is approved.

## 6. Elite Athlete/Event Fairness Evaluation

(a) Purpose. The purpose of the Elite Athlete/Event Fairness Evaluation process is to ensure that athletes competing in the Female competition category who have transitioned from a Male biological gender assignment at birth, do not have an unfair advantage over their cisgender Female competitors in Elite Events.

(b) Elite Athlete/Event Fairness Application. To initiate the Elite Athlete/Event Fairness Evaluation process, an athlete must submit an Elite Athlete/Event Fairness Application (“Application”) to the USA Swimming Senior Director, Legal & Membership Affairs (<https://fs22.formsite.com/usaswimming/EliteEligibility/index.html>) at least ninety (90) days prior to the start of the first Elite Event in which the athlete seeks to compete in the Female competition category. The Senior Director shall submit the Application to a panel consisting of three independent medical experts, with preference for experience related to transgender health and/or the physical performance of transgender athletes relevant to swimming and the effect of medical approaches in mitigating any pre-existing physical advantages (the “Elite Athlete/Event Fairness Panel”). USA Swimming’s Director, Sports Medicine & Science, and Director, Performance, will serve as staff liaisons to the Elite Athlete/Event Fairness Panel. In addition to the two staff liaisons, the USA Swimming Athletes’ Advisory Council will appoint a 10-Year Athlete representative,

as defined in the USA Swimming Rules & Regulations, to serve as an athlete liaison to the Elite Athlete/Event Fairness Panel. Prior to appointment to the Elite Athlete/Event Fairness Panel, the name and resume of any independent medical expert will be sent to USA Swimming's Athletes' Advisory Council, for review and comment. Any medical expert reviewed without objection by the USA Swimming's Athletes' Advisory Council (an "Elite Medical Panelist") may be selected by USA Swimming for future panels.

(c) Eligibility Criteria. As a condition of eligibility, the athlete must satisfy the Elite Athlete/Event Fairness Panel that:

(i) From a medical perspective, the prior physical development of the athlete as a Male, as mitigated by any medical intervention, does not give the athlete a competitive advantage over the athlete's cisgender Female competitors.

(ii) In addition to other relevant factors considered by the Panel in (i) above, it shall be presumed that the athlete is not eligible unless the athlete demonstrates that the concentration of testosterone in the athlete's serum has been less than 5 nmol/L (as measured by liquid chromatography coupled with mass spectrometry) continuously for a period of at least thirty-six (36) months before the date of Application. This must include at a minimum three (3) separate blood tests within the past three hundred sixty-five days (365) days preceding the Application, with the last test conducted within ninety (90) days prior to the athlete's Application. This presumption may be rebutted if the Panel finds, in the unique circumstances of the case, that the criteria set forth in (i) above has been satisfied notwithstanding the athlete's serum testosterone results (e.g., the athlete has a medical condition which limits the bioavailability of the athlete's free testosterone).

(d) Panel Evaluation. In conducting its evaluation of an athlete's Application, the Elite Athlete/Event Fairness Panel shall consider the medical file, serum testosterone results, and other information submitted by the athlete. The Panel may also request additional information from the athlete or the athlete's treating physicians. The Panel may also direct additional testing. Per the International Olympic Committee Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations (the "Framework"), the Panel will not request any of the prohibited testing as set forth in that Framework and will not request gynecological examinations or similar forms of invasive physical examinations, aimed at determining an athlete's sex, sex variations, or gender. The athlete must fully cooperate with the Elite Athlete/Event Fairness Panel in its evaluation efforts. The athlete will acknowledge that this evaluation process is complicated and agrees that neither USA Swimming or members of the Elite Athlete/Event Fairness Panel shall be liable for any detriment caused the athlete by delays in the evaluation process. Any costs that the Panel incurs or the athlete incurs at the request of the Panel associated with this evaluation will be paid by USA Swimming.

(e) Panel Decision. If the Elite Event/Fairness Panel decides to approve an athlete's Application, that decision and any conditions associated with that decision shall be communicated to the athlete by the Senior Director, Legal & Membership Affairs. In order to maintain eligibility, if the Application is approved, the athlete must keep the athlete's serum testosterone concentration below 5 nmol/L and comply with any other conditions of the Elite Athlete/Event Fairness Panel's approval for so long as the athlete wishes to compete in the Female category in Elite Events. The Elite Athlete/Event Fairness Panel shall also establish an internal plan for the continued monitoring of the athlete's compliance with the eligibility criteria and the Panel's approval. If the Elite Athlete/Event Fairness Panel denies the Application then the reasons for that denial shall also be communicated to the athlete.

(i) The Elite Athlete/Event Fairness Panel may revoke or modify its approval of an athlete's Application based on subsequently acquired information

(ii) An athlete may not change the athlete's swimming competition category back to Male for purposes of Elite Events for a period of four years following the approval of the athlete's Application.

(f) Guidelines. The Elite Athlete/Event Fairness Panel may establish guidelines for the implementation of the evaluation process. Such guidelines, if and when adopted, will be attached to this Policy.

## 7. Policy Amendments for Consistency with Future FINA Rules

USA Swimming acknowledges that at the time of adoption of this Policy, FINA is in the process of developing its own Gender Eligibility Rules. When FINA Gender Eligibility Rules go into effect, the eligibility criteria in those FINA Rules shall replace any inconsistent eligibility criteria found in Paragraph 6(c) of this Policy. If the FINA Gender Eligibility Rules are different than the criteria in place when an athlete's Elite Athlete/Event Fairness Application was approved under this Policy then, for purposes of Elite Events, that approval shall be void. The athlete must then resubmit an Application for evaluation under the new FINA Gender Eligibility criteria, unless the Panel determines that the prior evaluation is still valid under the new FINA Gender Eligibility criteria.

## **8. Appeals<sup>5</sup>**

If an athlete or USA Swimming wishes to challenge the decision of the Self-Identity Panel or Elite Athlete/Event Fairness Panel with respect to the athlete's Self-Identity Verification Request or Elite Athlete/Event Fairness Application, either may appeal the decision by requesting a review hearing with the USA Swimming Self-Identity and Elite Athlete/Event Fairness Appeal Body ("Appeal Body"). The Appeal Body shall consist of the Chair of the USA Swimming National Board of Review, an eligible athlete member of the National Board of Review appointed by the Chair of the National Board of Review, and an Elite Medical Panelist appointed by the Chair of the National Board of Review. Pending a decision by the Appeal Body, the athlete shall remain eligible to compete in the competition category (e.g., Male or Female) consistent with the biological gender assigned to the athlete at birth. The parties to the appeal shall be the athlete and USA Swimming. No other person or entity shall have standing to challenge the decisions of either the Self-Identity Panel or the Elite Athlete/Event Fairness Panel or to participate in any appeal. The Appeal Body shall be the exclusive forum for challenges to Self-Identity Panel or Elite Athlete/Event Fairness Panel decisions. In any proceeding before the Appeal Body, the Eligibility Criteria and presumption established in Paragraph 6(c) of this Policy shall not be subject to challenge or review. The athlete may challenge only the application of the Eligibility Criteria to the athlete's individual circumstances. The decision of either Panel shall be upheld unless the Appeal Body finds that the appellant has carried the burden of demonstrating that the Panel's decision is arbitrary and capricious with no rational basis. In a review hearing, the Appeal Body shall consider such witness testimony and/or other evidence that the Appeal Body considers relevant and appropriate. The Chair of the USA Swimming National Board of Review may adopt appropriate rules of procedure for the Appeal Body subject to review and approval by USA Swimming's Secretary & General Counsel. The Appeal Body's decision shall be final and binding on both USA Swimming and the athlete. Nothing in this Paragraph 8 shall be construed to limit the rights of members provided by the Ted Stevens Olympic and Amateur Sports Act and Article 301.3 of the USA Swimming Rules and Regulations.

## **9. Confidentiality**

All Athlete information provided to USA Swimming under this Policy, and the results of examinations and assessments conducted under this Policy, will be dealt with in strict confidence and applicable privacy laws. Such information will not be used for any purpose not contemplated in this Policy and will not be disclosed to any third party unless that disclosure is necessary for the effective application and enforcement of this Policy or is required by law. USA Swimming shall not publicly comment on individual Requests, Applications, or decisions under this Policy except, in its discretion, it may do so in response to public comments attributed to the athlete or the athlete's representatives. Once a decision has been rendered, either by one of the panels or the Senior Director, Legal & Membership Affairs, USA Swimming will consult with the athlete on the best ways to publicly communicate about their eligibility.

## **10. Other Eligibility Requirements Not Affected**

The application of this Policy shall not affect eligibility requirements or rules otherwise set out in the USA Swimming Rules and Regulations or the USA Swimming Operating Policy Manual.

## **11. Compliance with Anti-Doping Rules**

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<sup>5</sup> For the avoidance of doubt, Articles 405, 406, and 407 of the USA Swimming Rules and Regulations do not apply to this Policy.

Nothing in this Policy shall affect an athlete's obligation to fully comply with the Anti-Doping Rules of United States Anti-Doping Agency, the USOPC, FINA, USA Swimming, or the organizer of an event in which the athlete competes. If the use of a substance on the World Anti-Doping Agency Prohibited List is contemplated in connection with a gender transition, then the athlete must first obtain a Therapeutic Use Exemption from the U.S. Anti-Doping Agency before that substance is used.

## **12. Discrimination Prohibited**

All USA Swimming members, including its athlete members, have a right to participate in the activities of USA Swimming without being subjected to harassment or discrimination regarding their sexual orientation, gender expression, or transition to a different swimming gender category. Any USA Swimming member who engages in conduct which violates this right shall be subject to discipline under the USA Swimming Code of Conduct.

## **13. Membership Requirement**

In order for an athlete to submit a Self-Identity Verification Request or Elite Event Fairness Application, the athlete must be an athlete member of USA Swimming.

## **14. Assistance With This Policy**

USA Swimming is committed to the inclusion of transgender individuals in the sport of Swimming subject to the eligibility requirements set forth in this Policy. Any person seeking information on the application of this Policy should contact Senior Director, Legal & Membership Affairs for assistance. ([SIV@usaswimming.org](mailto:SIV@usaswimming.org))

## **15. Athlete Agreement, Consent and Release**

By submitting a Self-Identity Verification Request or Elite Athlete/Event Fairness Application, an athlete will be required to represent and agree that:

(a) All information submitted in connection with the Request or Application is accurate and complete to the best of their knowledge and that no relevant information has been intentionally withheld.

(b) The athlete will fully cooperate with and provide any additional information requested by the Self-Identity Panel or Elite Event Fairness Panel.

(c) In connection with the Elite Athlete/Event Fairness Panel's evaluation of the athlete's Application, or for the continuing monitoring of the athlete if that Application is approved:

- i. To provide medical waivers and releases allowing the athlete's physicians to share records with the Panel.
- ii. To comply with any conditions imposed by the Panel as a condition of its approval of the athlete's Application.
- iii. To undergo any additional medical testing required by the Panel in connection with its evaluation of the athlete's Application, or ongoing status if the Application is approved. The cost of any such testing will be at USA Swimming's expense.
- iv. To advance notice, or no advance notice, blood sample collection to evaluate the athlete's serum testosterone level.
- v. Any blood sample collected in connection with an anti-doping control may also be used for such purpose.

(d) The athlete agrees that neither USA Swimming, any member of the Self-Identity Panel or Elite Athlete/Event Fairness Panel, or any USA Swimming employees, directors, officers, agents, representatives, or other persons involved in the administration of this Policy shall be liable in any way in relation to acts done or omitted to be done in good faith in connection with the administration of this Policy.

All eligible athletes will have the opportunity to participate in swimming in a manner that is consistent with their gender identity and expression. Should a situation arise regarding an athletes' intent to change competition category to one consistent with their gender identity, an athlete may seek eligibility review for participation in the different competition category, through the procedures set forth below.