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February 28, 2017

Ms. Nancy Hogshead-Makar
Champion Women
3116 St. Johns Avenue
Jacksonville, FL 32205

Ms. Marci A. Hamilton
CHILD USA
c/o Penn Center for Youth and
Family Trauma Response
3535 Market St., Office 3092
Philadelphia, PA 19104

Dear Ms. Hogshead-Makar and Ms. Hamilton:

Thank you for your interest in the U.S. Center for SafeSport and our important and essential work to ensure that athletes at all levels are safe, strengthened and supported. We appreciate your February 6, 2017 letter commenting on the December 2016 draft of the Center's policies and procedures, including the SafeSport Code.

We were pleased to see the majority of your concerns were already addressed in the December 2016 draft and are also reflected in the final version of the Code. We have addressed your suggestions and concerns below and assure you the SafeSport Code has been written and will be implemented to maximize the protection of all athletes and sport participants.

1. The USOC, NGBs, and/or their agents have no role in Center proceedings

You suggest that defense counsel from the USOC and NGBs should be precluded from participating in the Center's investigations and hearings. We agree. In earlier drafts and in the final document, the policies provide that the Center—not the USOC or NGBs—has the *exclusive* authority to investigate and resolve allegations of sexual misconduct. Moreover, the arbitration rules have consistently and explicitly limited attendance at the hearing ("only the following individuals shall be present at the hearing (1) the Office; (2) the Responding Party; (3) the Reporting Party; (4) the parties' respective advisors; and (5) witnesses during their own testimony").

2. The Center has jurisdiction over anyone within the NGB's disciplinary jurisdiction

You urge that "NGB members" and "coaching association members" should be subject to safe sport requirements. The Center's jurisdiction broadly includes "*any* individual who ... currently is, or was at the time of a possible SafeSport Code Violation, within the governance or disciplinary jurisdiction of an NGB." This expansive assertion of jurisdiction casts a broad net, protecting athletes of any age or competitive level.

3. The Code requires uniform standards prohibiting sexual misconduct

You also suggest, and we agree, that there should be a uniform code enforced by the Center regarding prohibited sexual misconduct. The earlier drafts and the final document provide uniform prohibitions of sexual misconduct that will control all cases once the *Code* takes effect. The Center will enforce prior NGB rules only for sexual misconduct preceding the *Code's* effective date or for proactive policies.

Further, under section 8.7(l) of the U.S. Olympic Committee's bylaws, all NGBs must comply with the Center's policies and procedures. Those policies and procedures—which apply consistently across NGBs—are set forth in the *Code*, practices and procedures, and rules for arbitrations.

4. The Code prohibits intimate relationships involving an imbalance of power

You urge that the Center be charged with the duty to resolve all alleged sexual or romantic relationships between an athlete and an individual in a position of power. The earlier draft and final document clearly prohibit intimate relationships involving an imbalance of power (“[s]exual misconduct offenses include ... Intimate Relationships involving a Position of Power where a Power Imbalance exists”)¹. This should address your point that Center be charged with the duty to resolve all alleged sexual or romantic relationships between an athlete and an individual in a position of power.

5. The Center initiates proceedings based on reports from anyone

You also suggest that third parties should be “able to report” violations and note that in some instances a third party may be the athlete suffering the harm. We agree. Both early drafts and the final *Code* encourage reporting by *anyone* aware of misconduct subject to the Center's jurisdiction (“Anyone, even if not obligated to report, is encouraged to report possible other violations of the SafeSport Code.”). And we go further, providing that the Center may initiate proceedings based on notice alone (“Whenever the Office becomes aware of an actual or suspected Violation, it will initiate proceedings”).

Relatedly, you suggest that covered individuals should be required to report violations to both the Center and law enforcement authorities. The Code is careful to make clear that the reporting requirements it imposes do not supersede any legal requirements (which vary from jurisdiction-to-jurisdiction) to report crimes to law enforcement.

6. The Center provides victims with the power of choice

You advocate that the Center proceed with investigations of sexual misconduct, even without cooperation from a victim. While the Center explicitly reserves the right to move forward without cooperation from a victim (“As necessary, the office reserves the

¹ The December draft likewise provided that—without respect to any age difference or purported consent—“a Covered Individual shall not engage or attempt to engage in romantic relationships with any person to whom the person stands in a position of trust and/or where there is an imbalance of power.”

right to initiate formal resolution procedures without a report from or participation by the [victim]”), we do not believe it should do so in all cases. Our approach is based on currently available evidence concerning the importance of trauma-informed investigations:

Individuals who have experienced trauma feel they have lost control over the situation, and the ability to reestablish a degree of control is crucial for healing. . . . [R]emember that if reporting parties request a delay in your process for some reason, you can often honor that, document it, and return to your investigation when they are ready to proceed.

The 7 Deadly Sins of Title IX Investigations, pp. 5-6 (ATIXA 2016).

Accordingly, the Center will honor a victim’s request for confidentiality when it can do so while still providing a safe environment for participants.

7. Specific prevention strategies should be contextual

You advocate for certain absolute rules: for example that “No child should be allowed to be alone with sport personnel, unless it is a family member or legal guardian.” In its document “Preventing Child Sexual Abuse Within Youth-serving Organizations: *Getting Started on Policies and Procedures*” the CDC says of one-on-one interactions that such a “strategy must be modified” based on an organization’s mission and endorses choosing among options for one-on-ones: making this a mandatory policy at all times; making this policy dependent on the risk of the activity or situation, such as overnight trips, or maintaining other safeguards such as extra supervision or contact with youth and employees/volunteers and more stringent screening if the mission of your organization requires one-on-one time between employees/volunteers and youth (e.g., mentoring programs). Accordingly, we believe any such policy addressing one-on-one interactions is best administered by the NGBs and/or local organizations in accordance with the specifics of their sport, provided those policies do not violate the SafeSport Code.

8. The Center will not prejudge appropriate sanctions for sexual misconduct

You also ask the Center to pre-determine the appropriate sanctions for various offenses. Our approach is to list the possible sanctions from most severe to least severe, as well as the general considerations that will govern the sanctioning decision. The determination of the appropriate sanction will vary depending on the circumstances, with the overall goal of providing maximum protection of program participants.

Finally, many of your comments seek to ensure the Center has achieved and will maintain the requisite independence to effectively complete its work. We do and will continue to operate independently and agree that this independence is essential to achieving our mission. If we identify issues that interfere with our ability to fulfill the Center’s charter, we assure you we will address them promptly and thoroughly.

This is an exciting time for the Center as we begin our vital work in the sport community. We invite you to visit our new website (www.safesport.org) later this week to learn more about the Center and to view the final SafeSport Code. Thank you again for your constructive suggestions and we appreciate your support of the U.S. Center for SafeSport.

Sincerely,

Shellie Pfohles

Shellie Pfohl
Chief Executive Officer
U.S. Center for SafeSport