



July 19, 2021

*Sent via fax*

Fédération Internationale de Natation  
Chemin de Bellevue 24a/24b  
CH-1005 Lausanne  
Phone: (+41-21) 310 47 10  
Fax: (+41-21) 312 66 10

**Re: FINA's Denial of Use for Swim Caps Designed for Natural Black/Afro Hair in Competition**

Dear President Husain Al Musallam and FINA Bureau:

We write to the Fédération Internationale de Natation (“FINA”), the sole and exclusive world governing body for water sports and the regulatory body recognized by the International Olympic Committee (“IOC”) for administering international competitions in water sports, with concerns regarding FINA’s recent decision to deny the use of swimming caps designed for natural Black and/or afro hair textures and styles in competition, including at the 2021 Summer Olympic Games in Tokyo.

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) was founded in 1940 by civil rights lawyer Thurgood Marshall, who later became the first Black Justice of the United States Supreme Court. In the 81 years since its inception, LDF has used litigation, advocacy, and public education to promote full, equal, and active citizenship for Black Americans. LDF litigated the landmark case *Brown v. Board of Education*,<sup>1</sup> which ended de jure segregation in public schools across the United States and led to the dismantling of state-sponsored racial segregation throughout the country. LDF has also been on the frontlines of challenging policies that have a discriminatory impact on Black people because of specific characteristics related to their identity, including hair type. We have vigorously opposed hair and grooming policies that serve as pretexts or justifications for racial discrimination in schools, extracurricular activities, and in the workplace.<sup>2</sup> LDF has engaged in litigation and

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<sup>1</sup> 347 U.S. 483 (1954).

<sup>2</sup> See, e.g., Brief of NAACP Legal Def. & Educ. Fund, Inc. et al., as Amici Curiae, *EEOC v. Catastrophe Management Solutions*, 2016 WL 7173828 (11th Cir. Dec. 2, 2016); Press Release, LDF Makes Public

other forms of advocacy regarding hair discrimination in multiple jurisdictions across the United States, including supporting the Creating a Respectful and Open World for Natural Hair (“CROWN”) Act which prohibits race-based hair discrimination—or the denial of employment and educational opportunities because of hair texture or protective hairstyles—and has been adopted in 13 jurisdictions in the U.S.<sup>3</sup>

We are aware of and encouraged by FINA’s July 2, 2021 statement announcing its intent to reconsider the application denial for swimwear caps that accommodate natural Black and/or afro hair textures and styles.<sup>4</sup> However, the underlying issues which led to the initial rejection of application still deserve attention and redress. We write to 1) stress the history and implications of hair discrimination which serve to exclude Black people from participation in society; 2) share our general concerns with FINA’s conduct regarding swimwear that accommodates natural Black and/or afro hair textures and styles; 3) suggest opportunities to promote inclusion in swim and urge FINA to permit swim caps that accommodate natural Black and/or afro hair textures and styles in its competitive events and trainings.

### **Anti-Black Hair Discrimination**

Though anti-Black racism takes many forms, one persistent form is discrimination based on hair texture and/or styles inextricably linked to Black identity. Natural Black hair discrimination is one of the last remaining vestiges of direct regulation of the Black body in our modern, global society. Natural Black hairstyles have long been the target of deep-seated invidious stereotypes about Black people and their hair—mainly, that Black hair is unclean, unprofessional, or unkempt.<sup>5</sup> Racist stereotypes about the appropriateness or acceptability of Black hair continue to permeate social environments, including in school, at work, and in

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Records Request in Response to Hair Discrimination Case Involving Buena Regional High School Wrestler (Jan. 7, 2019), <https://www.naacpldf.org/pressrelease/ldf-makes-public-records-request-response-hair-discrimination-case-involving-buenaregional-high-school-wrestler/>; Press Release, LDF Sends Letters Over Concerns with Discriminatory Hair Policies Stemming from Incident Involving New Jersey High School Wrestler (Feb. 12, 2019), <https://www.naacpldf.org/press-release/ldf-sends-letters-concerns-discriminatory-hair-policies-stemming-incident-involving-new-jersey-high-school-wrestler/>; Letter to Adam Miller from Angel S. Harris, et al., re: Clinton Stanley Jr. Complaint (Nov. 29, 2018), <https://www.naacpldf.org/wp-content/uploads/11.29.2018-Stanley-Complaint-002.pdf>.

<sup>3</sup> *About*, The Crown Act (last accessed July 15, 2021), <https://www.thecrownact.com/about>.

<sup>4</sup> Fédération Internationale De Natation, FINA Media Statement (July 2, 2021), <https://www.fina.org/news/2183443/fina-media-statement>.

<sup>5</sup> In fact, the term “dreadlocks” originated from slave traders who described Africans’ hair that had naturally formed into locs as “dreadful.” See Brown White, *Releasing the Pursuit of Bouncin’ and Behavin’ Hair: Natural Hair as an Afrocentric Feminist Aesthetic for Beauty*, 1 Int’l J. Media & Cultural Pol. 295, 965 n.3 (2005).

sports. Moreover, even when there is no overt negative connotation expressed concerning natural Black and/or afro hair textures and styles, the failure to consider them in the formulation of policies to accommodate specific hair types is its own form of anti-Black hair discrimination.

Black hair is also often an expression of identity and culture. It is a representation of history and carries deep emotional significance. Cornrows, locs, twists, afros, bantu knots, and other hair formations have historic connections to Black pride, culture, religion, and history.<sup>6</sup> The exceptional nature of Black hair goes beyond just cultural symbolism and significance. The elasticity and tight coils of Black hair cause it to have unique needs. The physical attributes make it more susceptible to breakage.<sup>7</sup> It cannot easily be straightened without damaging the hair.<sup>8</sup> Nonetheless, many Black people experience pressure to alter the texture of their hair to attain social and economic success.<sup>9</sup> Hair straightening has long been seen as a way to assimilate and make those unfamiliar with Black hair more comfortable.<sup>10</sup> Penalizing hairstyles that fall outside of Eurocentric norms of beauty, and instituting policies that subtly force or encourage Black people to adopt Eurocentric hairstyles or standards in competitive sports or events in a manner that does not take account of diverse hair textures, perpetuates anti-Black hair discrimination.

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<sup>6</sup> Mik Awake, What Cornrows Mean, GQ Magazine (Jun. 28, 2019), <https://www.gq.com/story/what-cornrows-mean>.

<sup>7</sup> Kesha J. Buster and Anna Levin, *Trichorrhexis Nodosa (Hair Breakage)*, Skin of Color Society (last accessed July 15, 2021), <https://skinofcolorociety.org/dermatology-education/trichorrhexis-nodosa-hair-breakage/>; see also Venessa Simpson, *What's Going on Hair?: Untangling Societal Misconceptions That Stop Braids, Twists, and Dreads from Receiving Deserved Title VII Protection*, 47 SW. L. REV. 265, 289 (2017).

<sup>8</sup> Paul Cornwell and Ernesta Malinauskyte, *Defying Damage: Understanding Breakage in Afro-textured Hair*, *Cosmetics and Toiletries* (Jan. 30, 2020), <https://www.cosmeticsandtoiletries.com/research/biology/Defying-Damage-Understanding-Breakage-in-Afro-textured-Hair-567425551.html>; Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 GEO. L.J. 1079, 1094 (2010); Venessa Simpson, *What's Going on Hair?: Untangling Societal Misconceptions That Stop Braids, Twists, and Dreads from Receiving Deserved Title VII Protection*, 47 SW. L. REV. 265, 276 (2017).

<sup>9</sup> *The 'Good Hair Study' Results*, Perception Institute, (August 2015), <https://perception.org/goodhair/results/>; Research Suggests Bias Against Natural Hair Limits Job Opportunities for Black Women, Duke Fuqua School of Business (Aug. 12, 2020), <https://www.fuqua.duke.edu/duke-fuqua-insights/ashleigh-rosette-research-suggests-bias-against-natural-hair-limits-job>; Chelsea Stein, *MSU research exposes discrimination against Black women with natural hair*, Michigan State University Broad College of Business (Sep. 18, 2020), <https://broad.msu.edu/news/msu-research-exposes-discrimination-against-black-women-with-natural-hair/>.

<sup>10</sup> Areva Martin, *The Hatred of Black Hair Goes Beyond Ignorance*, Time Magazine (August 23, 2017), <https://time.com/4909898/black-hair-discrimination-ignorance/>

Anti-Black hair discrimination is rooted in systemic racism, and its effect is to preserve the fiction of white superiority. Policies that prohibit natural hairstyles, like afros, braids, bantu knots, and locs, have been used to justify the removal of Black children from classrooms, and the denial of employment to Black adults throughout the world.<sup>11</sup> Black hair discrimination often manifests through facially neutral policies or practices that profile, single out, and disproportionately burden Black people for wearing their hair in its natural state or in protective styling intimately associated with Black identity. These policies are racial proxies that serve to limit the mobility of Black people in public and private spaces, strike at the freedom and dignity of Black people, and maintain the exclusivity of white spaces.

### **Concerns with FINA’s Rejection**

FINA’s initial rejection of the application of swimming caps designed to accommodate diverse hairstyles and textures, including natural Black hairstyles, is especially concerning given the ill-informed reasoning it reportedly provided to justify its decision. In the reported letter to the Black-owned company Soul Cap, FINA is alleged to have stated that the swim caps in question were unacceptable on the ground that they do not “follow[]the natural form of the head.”<sup>12</sup> Such reasoning embeds a preference for and deference to white hair as the norm that should inform regulations concerning what swim caps are permissible in competitive swimming. It also prioritizes and codifies a Eurocentric perspective as the appropriate standard for “normalcy.” Indeed, as mentioned above, afro and other diverse hair styles and textures are by definition the natural form of hair for many Black people. In order

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<sup>11</sup> Ra’Mon Jones, What the Hair: Employment Discrimination Against Black People Based on Hairstyles, 36 Harv. Blackletter L. J. (Jul. 20, 2020), [https://harvardblackletter.org/wp-content/uploads/sites/8/2020/07/HBK106\\_crop.pdf](https://harvardblackletter.org/wp-content/uploads/sites/8/2020/07/HBK106_crop.pdf); Jerome Taylor, *School braids ban ‘not justified’*, The Independent (Oct. 23, 2011), <https://www.independent.co.uk/news/uk/home-news/school-braids-ban-not-justified-2298925.html>; Roman Stubbs, *A wrestler was forced to cut his dreadlocks before a match. His town is still looking for answers*, Washington Post (Apr. 17, 2019), <https://www.washingtonpost.com/sports/2019/04/17/wrestler-was-forced-cut-his-dreadlocks-before-match-his-town-is-still-looking-answers/>; David S. Joachim, *Military to Ease Hairstyle Rules After Outcry from Black Recruits*, New York Times (Aug. 14, 2014), <https://www.nytimes.com/2014/08/15/us/military-hairstyle-rules-dreadlockscornrows.html>; Alexia Fernández Campbell, *A Black Woman Lost a Job Offer Because She Wouldn’t Cut Her Dreadlocks. Now She Wants to Go to the Supreme Court*, Vox (Apr. 18, 2018) <https://www.vox.com/2018/4/18/17242788/chastity-jones-dreadlock-job-discrimination>.

<sup>12</sup> Natalie Morris, *Swimming hats for Afro hair barred from Olympics as official body says elite athletes ‘don’t require caps of such size’*, Metro U.K. (Jun. 30, 2021), <https://metro.co.uk/2021/06/30/inclusive-swimming-hats-for-afro-hair-barred-from-the-olympics-14846410/>; Alice Evans, *Soul Cap: Afro swim cap Olympic rejection ‘heartbreaking’ for black swimmers*, BBC (July 2, 2021), <https://www.bbc.com/news/newsbeat-57688380>.

to conform to the “natural form of the head” as reportedly articulated by FINA, a Black person with natural hair would have to cut or otherwise manipulate their hair to reveal the shape of the head in a manner that most persons with European hair would not—and for no technical, sports-related reason. Reports regarding the language of the initial letter of rejection demonstrate an unfortunate disregard toward the inclusion of racially and ethnically diverse people in swimming and is reminiscent of insidious and racist stereotypes about what human characteristics qualify as natural or acceptable.

Moreover, FINA’s assertion that the swim cap was rejected on the grounds that “the athletes competing at the International events never used, neither require to use, caps of such size and configuration”<sup>13</sup> is an admission of FINA’s shortcomings with regard to diversity and inclusion in swimming. The lack of previously articulated need is neither proof that such need did not exist nor is it sufficient or justifiable reasoning to continue denial of an accommodation. Indeed, the lack of demand for “caps of such size and configuration” exemplifies the perception that swim is not a sport intended for racially and ethnically diverse people<sup>14</sup>—a perception FINA should take affirmative steps to correct.

### **Promoting Inclusion in Swimming**

Last year, following a wave of global protests against racial injustice and anti-Black racism in particular, many corporations, brands, and organizations, including the IOC, stressed the importance of racial equity and inclusion. Among the wave of public pledges and statements from various entities in response to the protests, the IOC acknowledged the importance of inclusion in the Olympics, calling the Olympic games a “celebration of the unity of humankind in all our diversity” and stating that it “condemned racism in the strongest terms.”<sup>15</sup>

In its June 2021 constitution, FINA noted among its objectives: “to promote and encourage the development of Aquatics in all possible regards throughout the world; to encourage participation in Aquatic disciplines at all levels throughout the world regardless of age, gender or race; to adopt necessary uniform rules and regulations and to hold or sanction competitions in swimming, open water swimming, diving, high diving, water polo,

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<sup>13</sup> Beth Harris, *Swim caps for thick, curly hair not allowed at Olympics*, Washington Post (July 2, 2021), [https://www.washingtonpost.com/sports/olympics/swim-caps-for-thick-curly-hair-not-allowed-at-olympics/2021/07/02/c4694778-db85-11eb-8c87-ad6f27918c78\\_story.html](https://www.washingtonpost.com/sports/olympics/swim-caps-for-thick-curly-hair-not-allowed-at-olympics/2021/07/02/c4694778-db85-11eb-8c87-ad6f27918c78_story.html).

<sup>14</sup> *Soul Cap: Afro swimming cap Olympic rejection could be reconsidered after backlash*, BBC (July 5, 2021), <https://www.bbc.com/news/newsbeat-57687096>

<sup>15</sup> Resolution of the IOC Executive Board with regard to racism and inclusion, Olympics.com (Jun. 10, 2020) <https://olympics.com/tokyo-2020/en/news/resolution-of-the-ioc-executive-board-with-regard-to-racism-and-inclusion>.

artistic swimming, and masters; and to carry out such other activities as may be desirable to promote the sport.”<sup>16</sup>

The IOC and FINA have articulated a clear commitment to equality and inclusion in their mission, however, it is unclear how that mission is operationalized within committees and day-to-day activities. In FINA’s governing documents, the only reference to diversity and inclusion are in its stated objectives.<sup>17</sup> There is no reference to diversity, inclusion, or the concerns of underrepresented groups in FINA’s Swimwear Approval Committee’s objectives, nor in any of its committee objectives.<sup>18</sup> Additionally, in its 2018-2021 Strategic Plan,<sup>19</sup> and its Mid-way Status Report,<sup>20</sup> FINA includes no mention or plan to increase diversity or engage underrepresented groups in swim. By more clearly integrating FINA’s objectives of inclusion and diversity into committee proceedings, strategic plans, decision making, and regular activity, FINA can better achieve its stated goals and objectives.

It is increasingly rare to find policies that are explicitly discriminatory, however policies that appear race-neutral can have a disproportionate impact on Black and other historically marginalized people. FINA’s facially neutral policies to exclude those who do not conform to uniform rules and regulations regarding swimwear is one such example. The restrictive nature of such standards may be virtually unnoticeable to those who are not negatively affected by them, but for swimmers whose natural hair does not fit into “standard” swim caps, such policies are prohibitive to participation, let alone competition. Swim caps that are designed to cover natural Black and/or textured afro hair do not present an unfair advantage for those who use them. Rather they enable swimmers to compete with swimwear that reflects their inherent physical attributes and identity. By stigmatizing swimmers of color and those interested in the sport of swimming and preventing them from engaging in competition with swimwear designed for their racial and ethnic identity, policies like FINA’s

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<sup>16</sup> Fédération Internationale De Natation, FINA Constitution (Jun. 5, 2021), [https://resources.fina.org/fina/document/2021/06/15/dfdc5d34-5752-4155-b1c4-82495a2c6019/22\\_FINA-Constitution\\_05.06.2021.pdf](https://resources.fina.org/fina/document/2021/06/15/dfdc5d34-5752-4155-b1c4-82495a2c6019/22_FINA-Constitution_05.06.2021.pdf).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Fédération Internationale De Natation, FINA Strategic Plan 2018-2021, (Last accessed July 16, 2021), [https://resources.fina.org/fina/document/2021/01/13/a3161908-b92b-47d3-9950-63f2b3fae2fc/fina\\_strategic\\_plan\\_2018-2021.pdf](https://resources.fina.org/fina/document/2021/01/13/a3161908-b92b-47d3-9950-63f2b3fae2fc/fina_strategic_plan_2018-2021.pdf).

<sup>20</sup> Fédération Internationale De Natation, FINA Strategic Plan 2018-2020 : Mid-way Status June 2020 (last accessed July 16, 2021), [https://resources.fina.org/fina/document/2021/01/13/ae477d6e-bfff-4a46-a4af-4c110317e6b9/fina\\_strategic\\_plan\\_2018-2021\\_midway\\_status.pdf](https://resources.fina.org/fina/document/2021/01/13/ae477d6e-bfff-4a46-a4af-4c110317e6b9/fina_strategic_plan_2018-2021_midway_status.pdf).



harm prospective and competitive Black swimmers and counter FINA's and the IOC's stated goals.

In addition to FINA's Swimwear Approval Committee's ("SAC") athletic, technical, legal, and scientific expertise, it must strengthen its cultural competency as its decision-making in this matter demonstrates. We urge FINA's SAC to review its policies to ensure that its swimwear regulations are not discriminatory. We urge FINA to ensure that all forms of natural hair and protective styles can be worn without risk of penalty or exclusion from competition. FINA should also educate employees and members on cultural sensitivity regarding natural hair and other potential barriers racially and ethnically diverse people face to full participation in swimming so that players, athletes, and competitors do not have to choose between their hair or ill-fitting swimwear and the sport they love.

### **Conclusion**

Participation and diverse representation in the world of competitive swimming requires attention to the swimwear requirements of athletes of all races and ethnicities. In order to encourage inclusion and promote swimming to a diverse population of people, it is imperative that athletic rules and the actions of governing bodies take the racial and ethnic diversity of swimmers into consideration. For all the reasons FINA advocates for increased access to swimming around the world, and for the above stated reasons, we urge FINA to reconsider its position on swim caps that accommodate natural Black and/or afro hair textures and styles. If you have questions or would like to discuss this matter further, we welcome you to contact our Director of Policy, Lisa Cylar Barrett at [lcylarbarrett@naacpldf.org](mailto:lcylarbarrett@naacpldf.org) or 202-216-5569.

Sincerely,

Janai S. Nelson, Associate Director-Counsel  
Lisa Cylar Barrett, Director of Policy  
NAACP LEGAL DEFENSE  
& EDUCATIONAL FUND, INC.  
40 RECTOR ST. 5TH FL.,  
NEW YORK, NY 10006  
(212) 965-2200  
[lcylarbarrett@naacpldf.org](mailto:lcylarbarrett@naacpldf.org)



Cc: Swimwear Approval Committee  
Jan-Anders Mansson, Chairman  
Bruce Mason, Member  
Shigehiro Takahashi, Member  
Maha Zaoui, Member  
Dave Pendergast, Member