

February 25, 2025

VIA ELECTRONIC MAIL

Arlington Public Schools
Office of the FOIA Officer
2110 Washington Boulevard
Arlington, 22204
foia@apsva.us
ATTN: APS FOIA Officer

Re: FOIA REQUEST: Records Regarding Arlington Public Schools' Violation of Title IX by Failing to Address Sexual Misconduct in a Girls' Locker Room

Dear APS FOIA Officer:

I am a resident of Arlington County and the Commonwealth of Virginia. I am a mother of two and my children previously attended Arlington Public Schools ("APS") and used its pool facilities at the Washington-Liberty High School Aquatics Center and Wakefield High School Aquatics Center. On February 5, 2025, I filed a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR") seeking an investigation of APS for violating Title IX of the Education Amendments of 1972 ("Title IX") by failing to respond properly to complaints of a sexual predator in the girls' locker room operated by APS at the pool.¹ This letter sets forth my request for documents concerning the school district's compliance with, and violations of, Title IX.

Background

In September 2024, community members began to complain to APS staff, including to APS's Director of Aquatics Management Helen Machado, that a man (the "Suspect"²) was loitering in the girls' locker room at the Washington-Liberty Aquatics Center, an indoor pool located at APS's Washington-Liberty High School, and that his "penis, testicles and legs were fully exposed to anyone walking through the entrance."³ Other community members went to the front desk of the aquatics center to complain that the Suspect had been exposing himself to young children (many of whom take lessons at the pool after school hours) throughout the girls' locker room for over an hour in a time frame when "the locker rooms were packed with kids."⁴ According to one regular

¹ <https://dfipolicy.org/wp-content/uploads/2025/02/DFI-Complaint-APS-02.05.2025-1.pdf>.

² While police and media reports identify the individual accused of the sexual misconduct at issue in this complaint, in recognition of the fact that the individual has not yet been convicted of the crimes relevant to this complaint, we decline to identify him by name.

³ Arlington GOP Virginia, *Newsletter: What did APS know? When? Who's responsible?*, <https://arlingtongop.org/2025/01/23/newsletter-what-did-aps-know-when-whos-responsible/> (last retrieved Jan. 29, 2025).

⁴ *Id.*

visitor of the Washington-Liberty High School pool, pool staff responded to her complaint about the Suspect by telling her that nothing could be done because the Suspect was claiming to be transgender.⁵

On October 21, 2024, the Suspect exposed his genitals to yet another victim in the girls' locker room.⁶ Someone reported this incident to the police two hours later,⁷ and the ensuing investigation resulted in the arrest of the Suspect, a tier three registered sex offender, on December 6, 2024.⁸ He is now facing multiple charges, including several counts of “intentionally making an obscene display of his private parts in a public place or in a place where others were present plus loitering within 100 feet of a high school after having been convicted of an offense prohibiting proximity to children.”⁹ “Arlington police say Cox is also facing charges for exposing himself in the women’s locker room at Wakefield High School in Arlington in October and in November.”¹⁰

Despite being informed of the Suspect’s sexual harassment of girls and women by multiple parents and pool patrons, and the Suspect’s own local notoriety, it appears that APS and its employees did nothing to protect the children in their care or, for that matter, any girls or women using its pool facilities from being exposed to the Suspect’s genitals in private spaces reserved for females. Based on media reports and first-hand accounts of APS employees’ response to the pool patrons’ complaints about the Suspect’s criminal behavior, it appears that these employees felt powerless to demand that the Suspect leave the pool facilities (or, at the very least, the girls’ locker room) because they were bound by an APS policy prohibiting discrimination on the basis of “gender identity” in the use of APS facilities.¹¹ Rather than intervene immediately to protect women and

⁵ *Id.*

⁶ Nick Minock, *Sex Offender who Identifies as Transgender Exposes Himself to Kids Again at Va. School*, Abc7 News (Jan. 24, 2025), <https://wjla.com/news/local/virginia-arlington-county-public-schools-aps-washington-liberty-high-school-sex-offender-richard-kenneth-transgender-exposes-himself-girls-locker-room-prosecution-fairfax#>.

⁷ ARLnow, *Police Investigating Indecent Exposure at Washington-Liberty HS Pool*, <https://www.arlnow.com/2024/10/23/police-investigating-indecnt-exposure-at-washington-liberty-hs-pool/> (last retrieved Jan. 29, 2025).

⁸ Arlington County Sheriff’s Office Inmate Query, <https://inmatewebquery.arlingtonva.us/NewWorld.InmateInquiry/VA0070000/Inmate/Detail/-1892777> (last retrieved Jan. 31, 2025).

⁹ Nick Minock, *Sex Offender who Identifies as Transgender Exposes Himself to Kids Again at Va. School*, Abc7 News (Jan. 24, 2025), <https://wjla.com/news/local/virginia-arlington-county-public-schools-aps-washington-liberty-high-school-sex-offender-richard-kenneth-transgender-exposes-himself-girls-locker-room-prosecution-fairfax#>.

¹⁰ Nick Minock, *Child sex offender visited 2 schools, 2 rec centers in Arlington and Fairfax counties*, News4SA (Feb. 6, 2025), <https://news4sanantonio.com/news/nation-world/virginia-arlington-fairfax-county-child-sex-offender-richard-cox-trans-transgender-schools-rec-centers-safety-locker-rooms-bathroom-president-trump-executive-order-gender-identity-lgbtq-lgbtqia>.

¹¹ See [https://go.boarddocs.com/vsba/arlington/Board.nsf/files/D7QLA5558D23/\\$file/A-3%20Nondiscrimination.pdf](https://go.boarddocs.com/vsba/arlington/Board.nsf/files/D7QLA5558D23/$file/A-3%20Nondiscrimination.pdf) at 1 (prohibiting discrimination on the basis of “gender identity” against any person who participates in an APS “program or activity,” and defining “[p]rograms

girls from a sexual predator, APS staff instead suggested that patrons avoid the private locker room space designated for their sex and took ineffectual actions that did nothing to remedy the harassment to which the Suspect's victims were subject.

APS's "too little too late" actions included allegedly posting signs around the pool, though the existence of such signs is disputed, and the content, which pleaded with pool users "to be considerate of others' privacy, cover intimate body areas when using shared spaces, close shower curtains, and follow all locker room etiquette guidance,"¹² was clearly ineffective in preventing a determined sexual predator from exposing himself to women and girls. The response also included revising APS pool rules to add language that does nothing to protect girls or women from men exposing their genitalia to others in girls' locker room. This guidance merely states:

"Locker Room Rules and Etiquette

Effective immediately, all patrons are required to abide by the following rules:

Respect for Privacy and Space

Be considerate of others' privacy. Please cover intimate body areas while using shared spaces.

Be mindful of your time while showering and close shower curtains.

Patrons who are not swimming must use the individual changing rooms located outside of the locker rooms."¹³

The response also included a statement from APS Superintendent Dr. Francisco Durán over six weeks after the Suspect's arrest that conflicted in various ways with the accounts of community members who actually witnessed the Suspect's harassing and abusive conduct and shockingly portrayed sex-separated bathrooms and locker rooms as "welcoming spaces where our community

or activities" to include "use of facilities"). Additionally, APS policy maintains that "[a]ccess to facilities that correspond to a student's gender identity will be available to all students."

[https://go.boarddocs.com/vsba/arlington/Board.nsf/files/BDNQEE68DE84/\\$file/J-2%20PIP-2%20Transgender%20Students%20in%20Schools.pdf](https://go.boarddocs.com/vsba/arlington/Board.nsf/files/BDNQEE68DE84/$file/J-2%20PIP-2%20Transgender%20Students%20in%20Schools.pdf).

¹² Mary Kadera, Chair, Arlington School Board, Jan. 30, 2025, *quoted in*

<https://wjla.com/news/local/virginia-arlington-county-schools-aps-transgender-bathroom-policy-residents-sex-offender-exposed-himself-richard-cox-washington-liberty-high-locker-room-superintendent-francisco-duran-aquatic-facility>.

¹³ *Compare Pool Rules and Regulations*, <https://www.apsva.us/aquatics/pool-rules-regulations/> and *Pool Rules and Regulations*,

<https://web.archive.org/web/20240720160928/https://www.apsva.us/aquatics/pool-rules-regulations/> (last retrieved Jan. 29, 2025).

can come to connect” rather than spaces where people, including young children, can undress safely without the presence of members of the opposite sex.¹⁴

At a school board meeting on January 30, 2025, Superintendent Durán said that APS is “strengthening the security protocols for signing into our facilities” by requiring a “100% ID check against the sex offender database before anyone is allowed to enter any of our facilities,” including after school hours.¹⁵ He said that the new system “will be in place no later than the end of February.”¹⁶ In that vein, effective February 15, APS updated its pool entry procedures to require such an ID check against a sex offender database and to restrict entry to shower facilities only to swimmers; in updating those procedures, APS reiterated its dedication to an “inclusive environment.”¹⁷ Of course, this new system would fail to prevent predators who do not appear in the sex offender database and who use the pool from freely accessing APS locker rooms based on their claimed “gender identity.”

In response to my February 5 complaint against APS filed in response to these events, OCR responded on February 14 that it had opened an investigation of this matter to determine “whether [APS] failed to respond as required to reports made in fall 2024 of sexual harassment occurring in the girls’ locker room at the [Washington-Liberty] Aquatics Center in violation of Title IX.”¹⁸

The public has a right to know more details about APS’s lack of immediate response to complaints about a sexual predator exposing himself to girls and women in the girls’ locker room at the Washington-Liberty Aquatics Center and the later decision of APS staff and leadership to implement ineffectual new policies in response to these crimes rather than reconsider their policy allowing all individuals to use intimate facilities that align with their claimed “gender identity.”

¹⁴ Arlington Public Schools, *A Message from the Superintendent* (Jan. 22, 2025)

<https://www.parentsquare.com/feeds/45123127?s=eyJhbGciOiJIUzI1NiJ9.eyJ1c2VyX2lkIjoyNjQwNzU0MSwiZXhwIjoxNzQ1MzUzODI5LCJ1cmwiOiJodHRwczovL3d3dy5wYXJlbnRzcXVhcmUuY29tL2ZlZWRzLzQ1MTIzMTI3IiwibWV0aG9kIjoir0VUUiwicXVlcnkOnt9LCJyZXF1ZXR0Ijp7fX0.-AI8NnH3bddoG0WerCejZDIR7FuDN9VpzMG-WsPw1q4>.

¹⁵ Nick Minock, *Arlington Residents Say APS Failed to Protect Children After Sex Offender Exposed Himself*, ABC7 News (Feb. 3, 2025), <https://wjla.com/news/local/virginia-arlington-county-schools-aps-transgender-bathroom-policy-residents-sex-offender-exposed-himself-richard-cox-washington-liberty-high-locker-room-superintendent-francisco-duran-aquatic-facility#>.

¹⁶ *Id.*

¹⁷ <https://www.apsva.us/post/updated-pool-entry-procedures/>.

¹⁸ Letter from Dan Greenspahn, District of Columbia Office, Office for Civil Rights, U.S. Dep’t of Educ., to Donald A. Daugherty, Jr., Defense of Freedom Institute for Policy Studies, Feb. 14, 2025, at 1 (on file with the author).

Requested Records

I request that the APS Office of the FOIA Officer produce the following records within five (5) business days as required by Virginia law:

1. All communications and correspondence (including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation) regarding the indecent exposure by an individual in the girls’ locker room at the Washington-Liberty Aquatics Center in September and October 2024, to or from APS employees with the following job titles, up through the date of the search:
 - Superintendent
 - Assistant Superintendent, Facilities & Operations
 - Assistant Superintendent, Finance and Management Services
 - Assistant Superintendent, Information Services
 - Assistant Superintendent, School & Community Relations
 - Assistant Superintendent, Human Resources
 - Executive Director
 - Director
 - Director, Aquatics Management
 - Director, Evaluation & Planning
 - Director, Facilities & Operations
 - Director, Maintenance
 - Director, School & Community Relations
 - Director, School Climate & Culture
 - Director, Secondary Education
 - Assistant Director, Accountability & Evaluation
 - Chief of Staff
 - Chief, Diversity, Equity & Inclusion Officer
 - Chief of School Support
 - Chief Operating Officer
 - Coordinator, Support Services
 - School Health Supervisor
 - Supervisor, Student Services
 - School Health Coordinator
 - Title IX Coordinator

2. All formal or informal complaints or reports of sexual harassment occurring in the girls’ locker room at the Washington-Liberty Aquatics Center in September and October 2024, and all records pertaining to APS’s investigation into the complaints or reports, including but not limited to:
 - Interview notes;
 - Witness statements;

- Documentary evidence;
 - Correspondence between reporting and responding parties and APS staff, law enforcement, and/or staff operating any program at the Washington-Liberty Aquatics Center;
 - Internal correspondence among APS staff;
 - Investigation reports;
 - Notices regarding the outcome of the investigation;
 - Documentation of corrective actions taken by APS, including but not limited to reports to law enforcement, discipline, letters of reprimand, education, training, and counseling; and
 - Documentation of any appeals submitted by reporting and/or responding parties and the Division's response to such appeals.
3. All communications and correspondence (including but not limited to electronic mail ("email"), email attachments, texts, letters, memoranda, and other documentation) regarding signs at APS pool facilities, pool rules, pool access policies, and locker room access policies between the individuals referenced in Item 1 from September 9, 2024, through the date of the search.
 4. Records of training and training materials provided to the Title IX Coordinator and investigative staff regarding the investigation of complaints of sexual harassment and other discrimination based on sex.
 5. Records of Title IX training and training materials provided by APS to students, teachers, and staff from September 1, 2020, through the date of the search.

The Virginia Freedom of Information Act ("FOIA") requires "public bodies" (defined to include any "district," "agency," or "political subdivision of the Commonwealth")¹⁹ to provide access to "public records" (defined to include "all writings and recordings" that are "in the possession of a public body or its officers, employees, or agents in the transaction of public business")²⁰ in response to a request from any citizen of the Commonwealth.²¹ APS is such a "public body,"²² and the communications requested above constitute "public records" covered by the statute. I am a citizen of the Commonwealth of Virginia. In response to a request that "reasonably" describes public records in its custody, APS must provide within five (5) working days the requested records or an explanation of why it cannot provide the requested records.²³ In addition, APS "shall make

¹⁹ Va. Code Ann. § 2.2-3701.

²⁰ *Id.*

²¹ *Id.* § 2.2-3704(A).

²² *Id.* § 2.2-3701.

²³ *Id.* § 2.2-3704(B).

reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body.”²⁴

DFI requests the following regarding the provision of the requested records:

- APS should immediately act to protect and preserve all records potentially responsive to this request, notifying any and all responsible officials of this preservation request and verifying full compliance with the preservation request. This matter may be subject to litigation, making the immediate initiation of a litigation hold on the requested materials necessary.
- APS should search all record systems that may contain responsive records, promptly consulting with its information technology (IT) officials to ensure the completeness of the records search by using the full range of APS’s IT capabilities to conduct the search. To constitute an adequate search for responsive records, APS should not rely solely on a search of a likely custodian’s files by the custodian or representations by that likely custodian, but should conduct the search with applicable IT search tools enabling a full search of relevant agency records, including archived records, without reliance on a likely custodian’s possible deletion or modification of responsive records.
- APS should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding APS’s business operations. Responsive records include official business conducted on unofficial systems which may be stored outside of official recording systems and are subject to the Virginia FOIA statute. APS should directly inquire, as part of its search, if likely custodians have conducted any such official business on unofficial systems and should promptly and fully acquire and preserve those records as APS official records. Such unofficial systems include, but are not limited to, governmental business conducted by employees using personal emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or X which was formerly known as Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack. Failure to identify and produce records responsive to this request from such unofficial systems would constitute a knowing concealment by APS calculated to deflect its compliance with the Virginia FOIA statute’s requirements.
- APS should provide entire records responsive to this request in a timely manner, broadly construing what information may constitute a “record” and avoiding unnecessarily omitting portions of potentially responsive records as they may provide important context for the requested records (*e.g.*, if a particular email is clearly responsive to this request, the response to the request should include all other emails forming the email chain, to include any attachments accompanying the emails).

²⁴ *Id.* § 2.2-3704(G).

- APS should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If APS determines that any portions of otherwise responsive records are statutorily exempt from disclosure, I request that APS disclose reasonably segregable portions of the records.
- For any responsive records withheld in whole or part by APS, they should provide a clear and precise enumeration of those records in index form presented with sufficient specificity and “shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.”²⁵
- Please provide responsive records in electronic format by email, native format by mail, or PDF or TIF format on a USB drive. If it helps speed production and eases APS’s administrative burden, DFI welcomes provision of the records on a rolling basis. Responsive records sent by mail should be addressed to 1765 Duke Street, Alexandria, VA 22314.

Conclusion

I appreciate APS’s prompt attention to this request for records pursuant to FOIA, which will provide important information to the people of the Commonwealth regarding the school district’s compliance with federal and state laws.

If you have any questions or I can further clarify my request, please contact me at your earliest convenience at virginia.gentles@dfipolicy.org.

Sincerely,


Virginia Gentles

²⁵ *Id.* § 2.2-3704(B)(2).