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April 10, 2025

Jeff Buch
c/o A. Boone Almanza
Almanza, Blackburn, Dickie & Mitchell LLP
2301 S. Capital of Texas Highway, Bldg. H,
Austin, Texas 78746

Via email: BAmanza@abdmllaw.com

Via certified mail

Re: Notice of Termination of Agreement for Property Management Services at the Eanes
Independent School District Aquatic Center for Cause

Dear Mr. Buch:

As you know, I represent Eanes Independent School District ("Eanes ISD" or the "District") regarding the Property Management Services Agreement (the "Agreement") with WAQUA, LLC ("WAQUA") for the Eanes ISD Aquatic Center (the "Facility"). [Exhibit 1].

THIS LETTER SERVES AS FINAL NOTICE OF DEFAULT AND TERMINATION OF THE AGREEMENT.

WAQUA is in default of Sections 4.01, 4.05, 4.06, 4.07, 5.05, 6.01, 6.02, and 7.01 of the Agreement. This letter shall serve as formal notice that the District is terminating the above-referenced Agreement, effective August 1, 2025, due to WAQUA's defaulting on the terms and conditions of the Agreement. Without limitation, the following are cited for default:

1. Repeated, continuous failure to maintain the Facility in a visibly attractive, well-groomed, safe, good and working condition at all times and as required for use of the Facility as a public school district competitive aquatics facility.
2. Repeated, continuous failure to manage and maintain the Facility as necessary for the District's athletics programs.
3. Failure to comply with applicable ordinances and local, state, and federal safety rules.
4. Failure to take actions required to manage and maintain the safety and security of the Facility and its occupants.
5. Failure to provide all staff and vendors necessary to carry out WAQUA's obligations under the Agreement.

6. Failure to comply with financial reporting requirements.
7. Violation of revenue sharing agreement.

Under Sections 12.01, 12.02, and 12.03 of the Agreement, Eanes ISD has the authority to terminate the Agreement without cost or penalty and require removal of WAQUA's presence from the facility. [Exhibit 1].

Moreover, by failing to perform a number of its obligations, WAQUA has materially breached its contractual obligations and warranties under the Agreement. WAQUA's material breach releases the District from performance under the Agreement and entitles the District to terminate the Agreement.

Background

The District is committed to providing a safe, visibly attractive, well-groomed aquatics facility that is kept in good and working condition to be predominantly used for Eanes ISD athletics activities. As you know, the District constructed the Facility as a new aquatics facility on a tract of land owned by the District with the intention that priority use of the Facility would be for the District's athletics programs, but that the facility would also be available for community use when not in use by the District. To further the District's intended purpose and commitment to providing a safe, clean Facility in good and working order, the District sought to engage a third party to manage and operate the Facility. The District published a request for proposals to which WAQUA responded. As you are aware, the District's primary goal was to engage an entity that would ensure that the Facility is managed, maintained, and operated such that it remains a safe, visibly attractive, well-groomed facility in good and working order.

WAQUA submitted a proposal in response to the District's request for proposals for the management, maintenance, and operation of the Facility. [Exhibit 2]. WAQUA represented that it had a unique understanding of the requirements necessary to manage, maintain, and operate a District facility. WAQUA acknowledged the importance of "eliminating any annual financial M&O risk to the District, providing safety and security for the users, and maintaining the property in order to minimize future expenses," and WAQUA represented that it would eliminate the District's maintenance and operation expenses. [Exhibit 2, pp. 2, 5]. Additionally, WAQUA highlighted the importance of daily, weekly, and annual maintenance and specifically acknowledged the importance of such maintenance in a facility primarily used by young athletes. [Exhibit 2, p. 5]. WAQUA also represented that it would "follow all safety protocols established by the District." [Exhibit 2, p. 5].

On or about June 11, 2020, the District entered into the Agreement with WAQUA. [Exhibit 1].

WAQUA Breached the Terms and Conditions of the Agreement

WAQUA has materially breached the terms of the Agreement by failing to fulfill its obligations to manage, maintain, and operate the Facility and failing to comply with financial reporting requirements under the Agreement in a manner that ensures the District is properly compensated under the revenue sharing agreement.

The Agreement assigns management, maintenance, and operation responsibility to WAQUA at all times during the Agreement Term. WAQUA is required to *maintain* the Facility in good and working order at all times. *Maintaining* the facility in a visibly attractive, well-groomed, safe, and good and working condition would obviate the need for numerous requests to perform cleaning, maintenance, and daily tasks necessary for the facility to be visibly attractive, well-groomed, safe, and in good and working condition. Instead, the District has had to prompt WAQUA's performance through multiple notices of defaults and maintenance requests. Repeated defaults by WAQUA violate the letter and spirit of the Agreement.

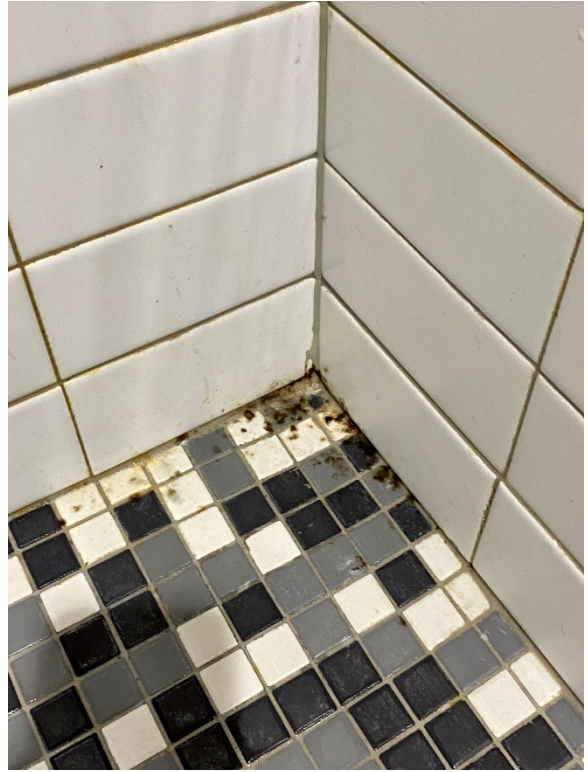
WAQUA Failed to Maintain the Facility

Sections 4.01 and 5.05 of the Agreement assign sole responsibility for all facility maintenance and management to WAQUA at all times during the term of the Agreement. WAQUA is obligated to operate, repair, and maintain the Facility "in a visibly attractive, well-groomed, safe, good and working condition *at all times*." (emphasis added) Specifically, Section 4.01 states that WAQUA "shall maintain and manage the Facility and provide all Services set forth in Article 5, and as required for use as a public school district competitive aquatics facility." Further, Section 5.05 requires WAQUA to, "at WAQUA's sole cost and expense, operate, repair and maintain the Property and Facility in a visibly attractive, well-groomed, safe, good and working condition at all times during the Agreement Term."

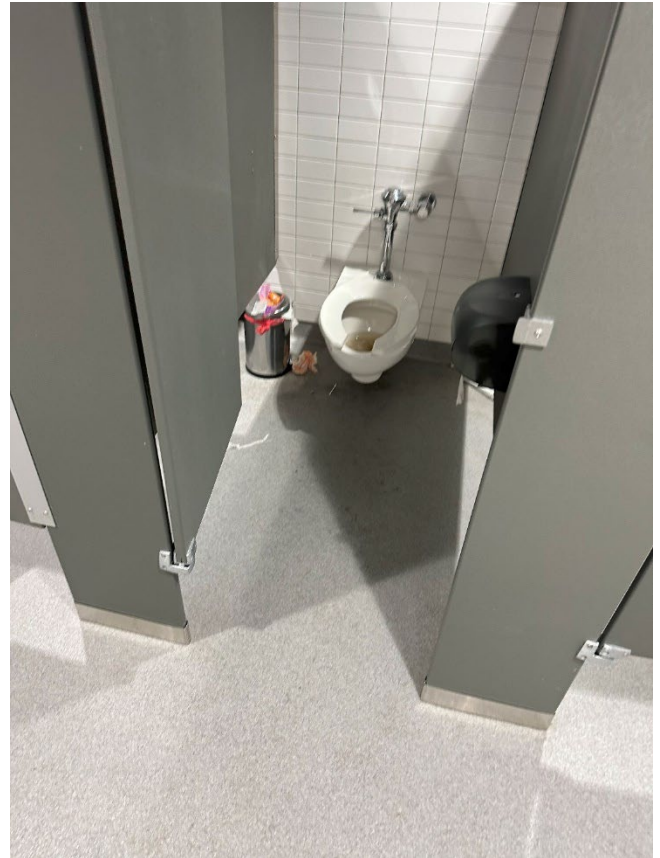
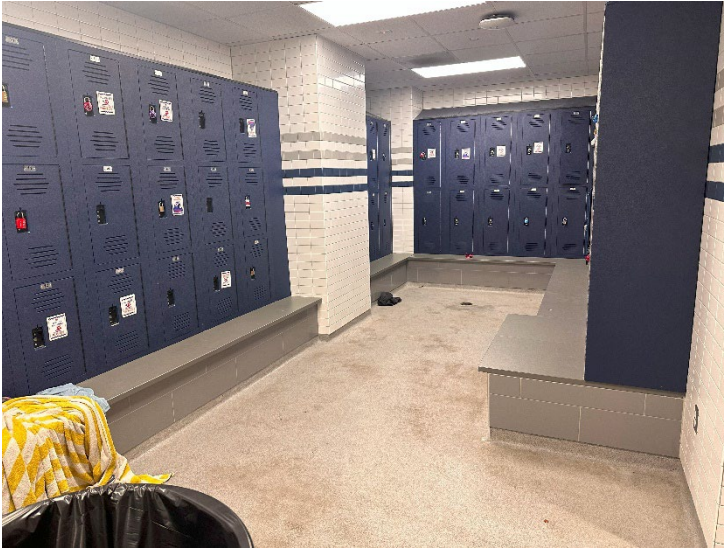
The Facility has been visibly unclean, poorly kept, in disarray, and conditions have been unsanitary throughout the contract term. The District began having to notify WAQUA of unclean conditions and request sufficient cleaning and maintenance almost immediately after the Facility opened.

On December 8, 2020, the District notified WAQUA that the Facility was not being properly cleaned. Showers and locker rooms had mold and mildew build up due to insufficient cleaning. [Exhibit 3].

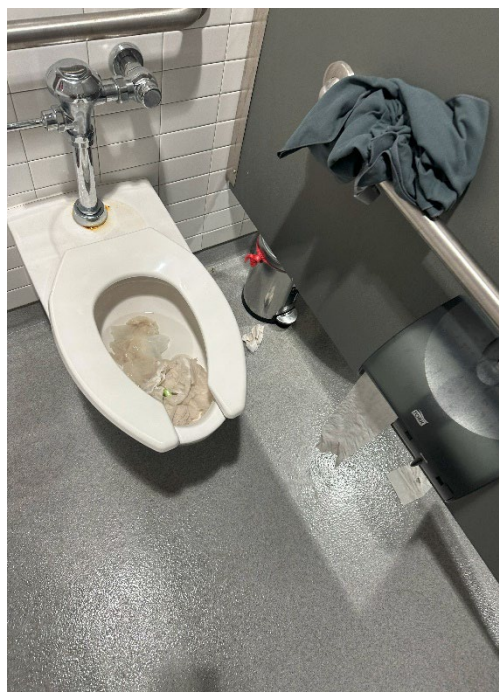
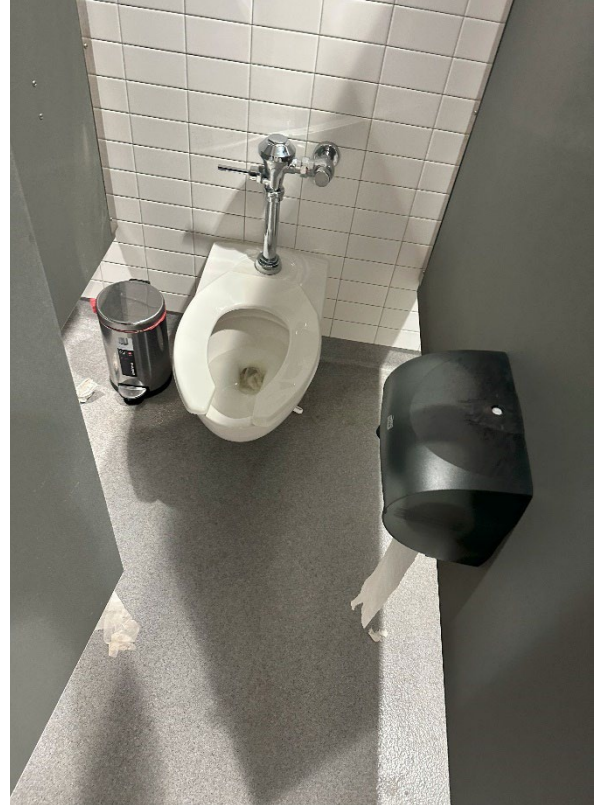
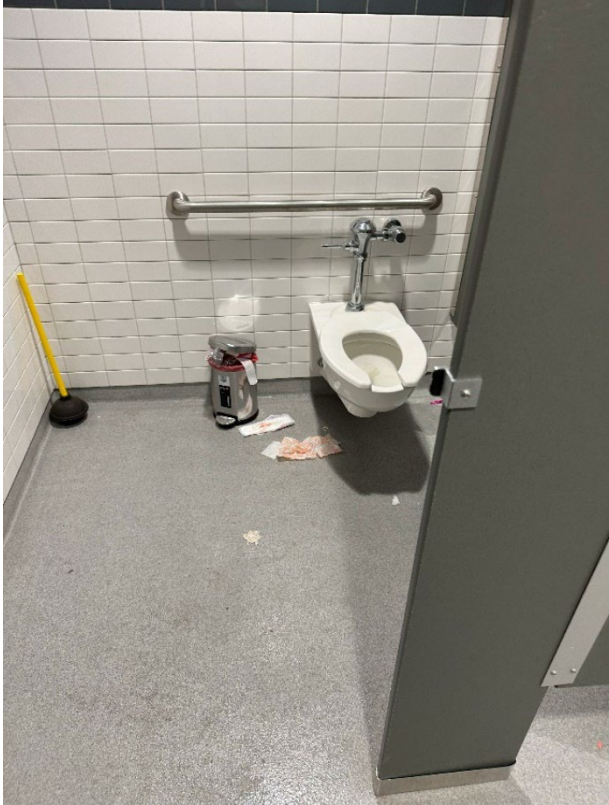


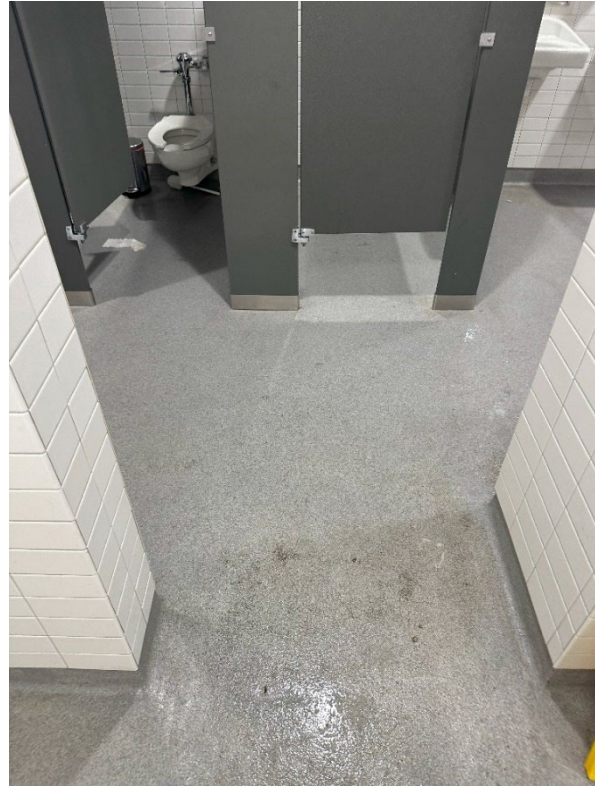


Cleanliness and maintenance issues continued, and the District continued reporting the issues to WAQUA. On October 19, 2023, locker rooms and bathrooms were unclean, visibly unattractive, and unsanitary:



On October 24, 2023, locker rooms and bathrooms were dirty, wet, and unsanitary, and toilets were clogged and not in good and working condition:





On December 20, 2023, the District provided WAQUA with a notice of non-compliance that included a copy of a risk assessment performed by an independent third-party risk management, compliance, and safety company. [Exhibit 4]. The risk assessment revealed that WAQUA's Facility maintenance and upkeep was "below industry standard" in multiple areas throughout the facility. Cleanliness, maintenance, and hygienic issues throughout the facility were noted by the auditors. Including observations of pooling water, discolored flooring, and overflowing trashcans. The risk assessment concluded that more frequent cleaning and maintenance were needed to ensure that the facility is "clean and hygienic." [Exhibit 5].

After the District provided written notice of default, WAQUA failed to maintain the Facility and keep it visibly attractive, well-groomed, safe, and in good and working condition even after receiving written notice of default from the District. The Facility's locker rooms and restrooms remained unclean, messy, dirty, and unsanitary.

On February 5, 2024, the District provided another written notice of maintenance and cleanliness issues. Specifically, the District informed WAQUA that locker rooms and bathrooms were still unclean, including toilet paper on restroom floors, overflowing trash, and spills left uncleaned on floors. The District included WAQUA Manager Jeff Buch on the correspondence in accordance with the Agreement, but Mr. Buch requested that emails regarding maintenance issues be directed to his son, Jack Buch, unless escalation is

needed. [Exhibit 6]. Ultimately, the Agreement requires WAQUA to maintain the facility at all times. The Agreement places the responsibility of Facility maintenance on WAQUA, not the District.

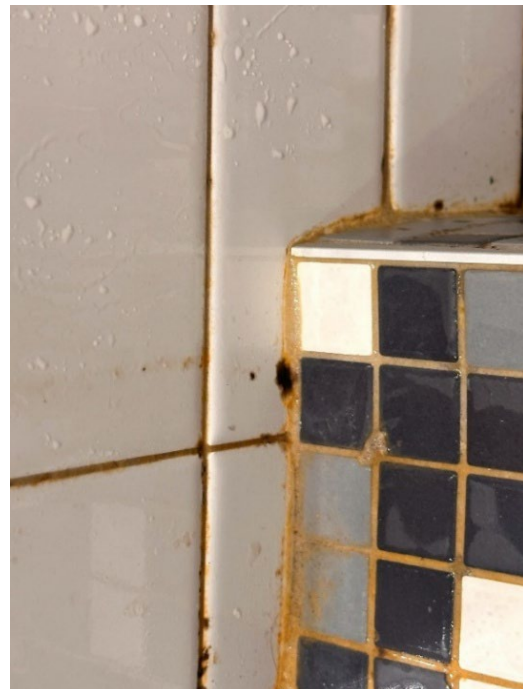
On November 7, 2024, the District sent WAQUA another written notice of default. The District notified WAQUA that the restrooms remained unclean, trash was still not being picked up, and routine maintenance was not being performed, and that the failures created an unsanitary environment which posed potential health and safety risks. [Exhibit 7].

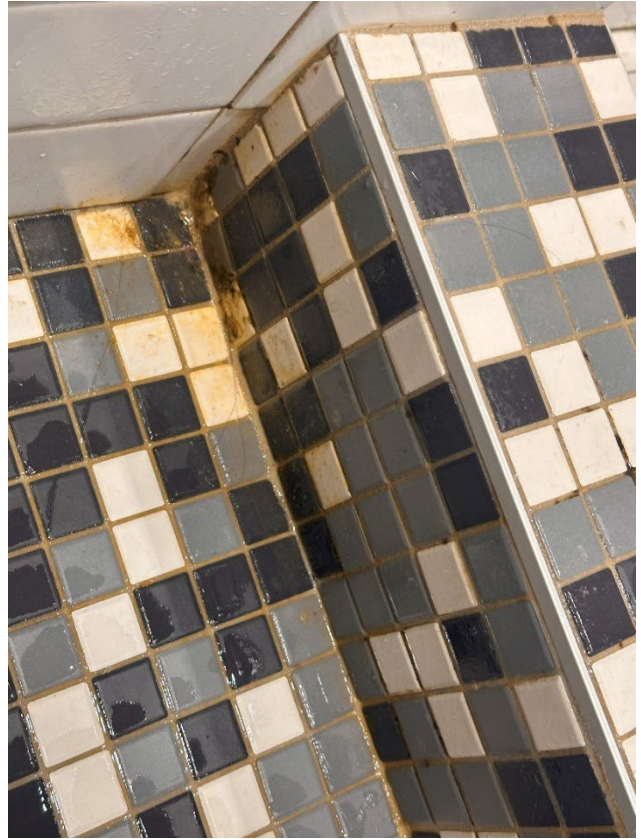
WAQUA failed to remedy the default, and the Facility remained unclean, unsanitary, and visually unattractive. On November 14, 2024, just one week after the District's November 7th written notice of default relating to unclean and unsanitary conditions, the girls locker room smelled like rotten trash and the floors were sticky.

Cleanliness issues persisted into January 2025. Throughout January 2025, trashcans were not routinely emptied. The Facility's indoor and outdoor trashcans continued to routinely overflow with trash, and trash continued to remain left on the Facility's floors.

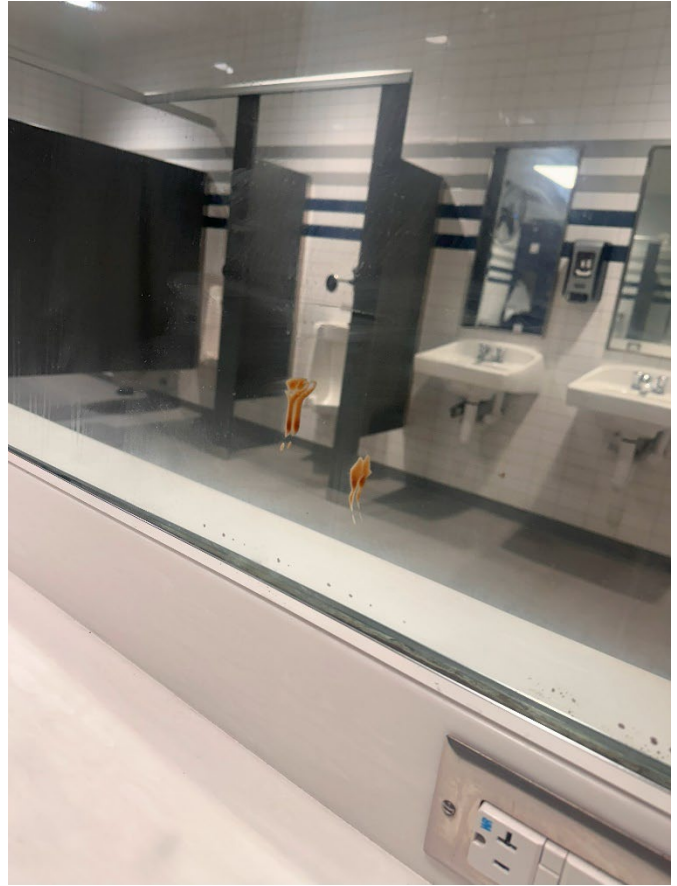
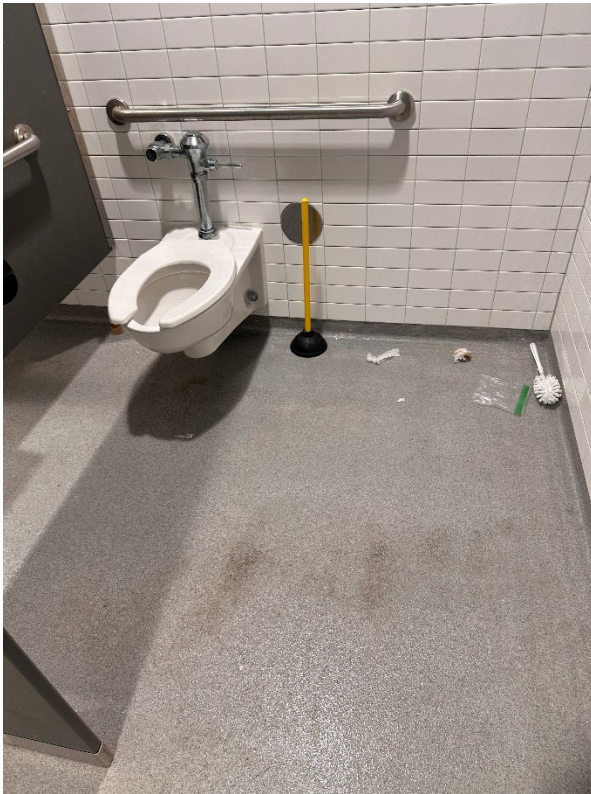
The District's swim teams practiced at the Facility on the evening of January 13, 2025. When District personnel and athletes left the Facility on January 13, 2025, it looked visible attractive and well-groomed. On January 14, 2025 the District had priority use of the Facility for a scheduled swim team meet. On January 14, 2025, District personnel returned to a visibly unattractive, messy, and unclean Facility. The pool looked unclean, and the bleachers were littered with trash, articles of clothing, and water bottles. The District's swim team coaches had to clean the Facility prior to the scheduled swim team meet.

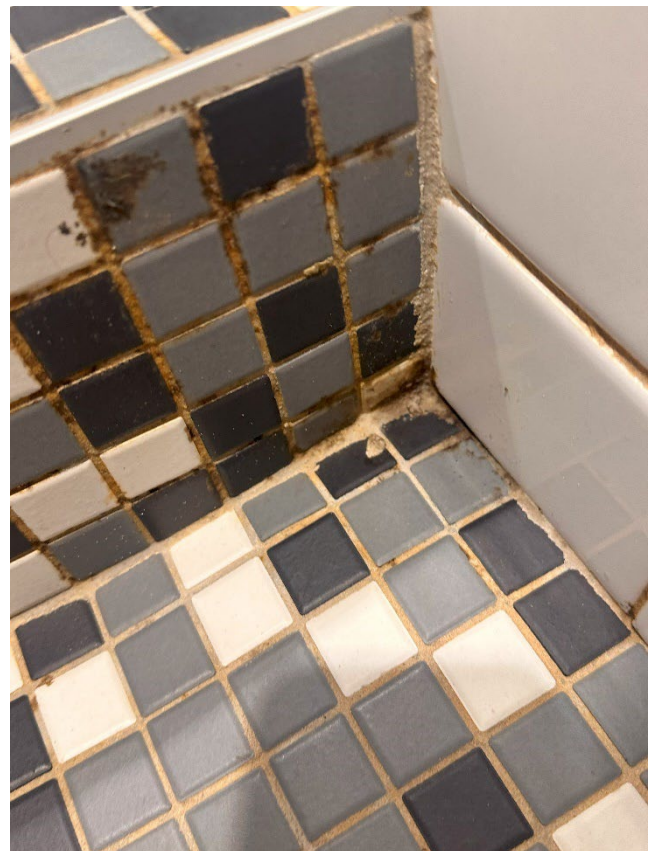
Cleanliness and maintenance issues have not been resolved and continue to persist.

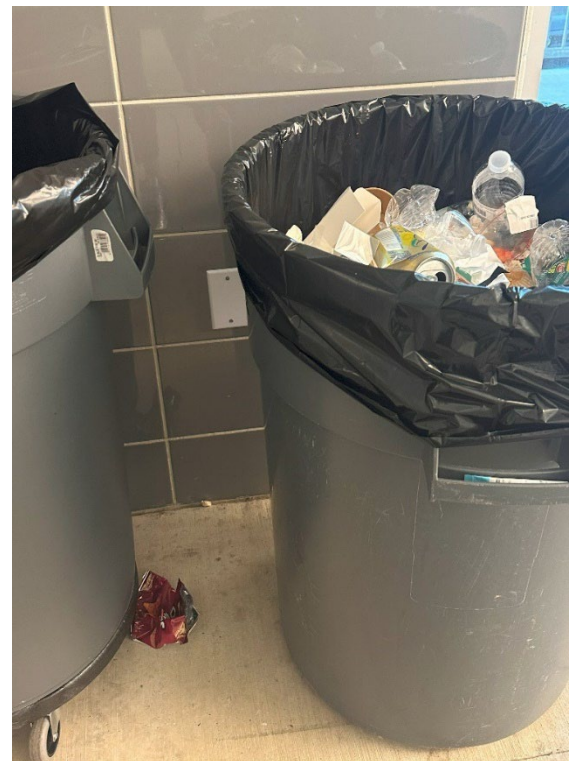
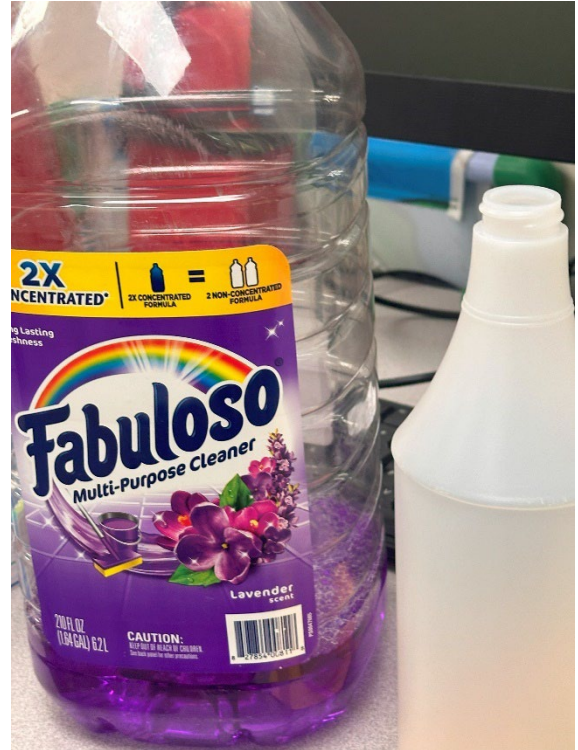


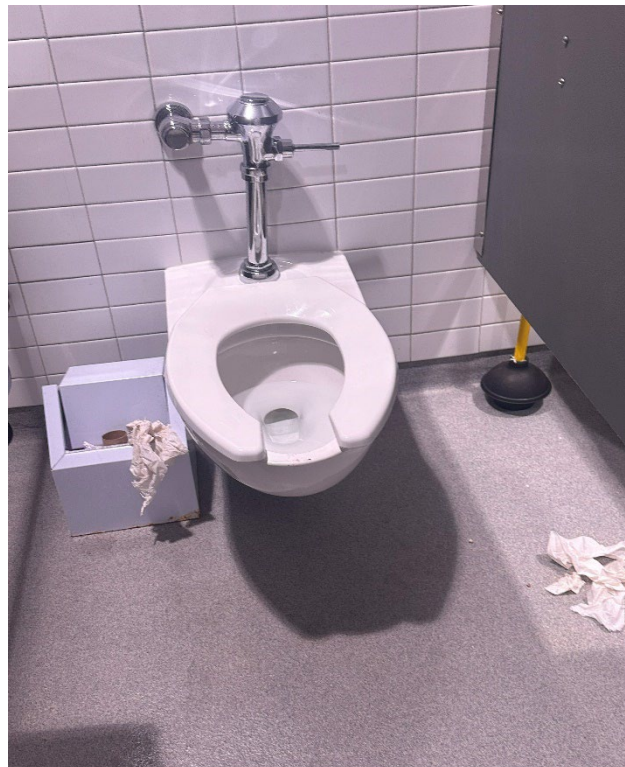


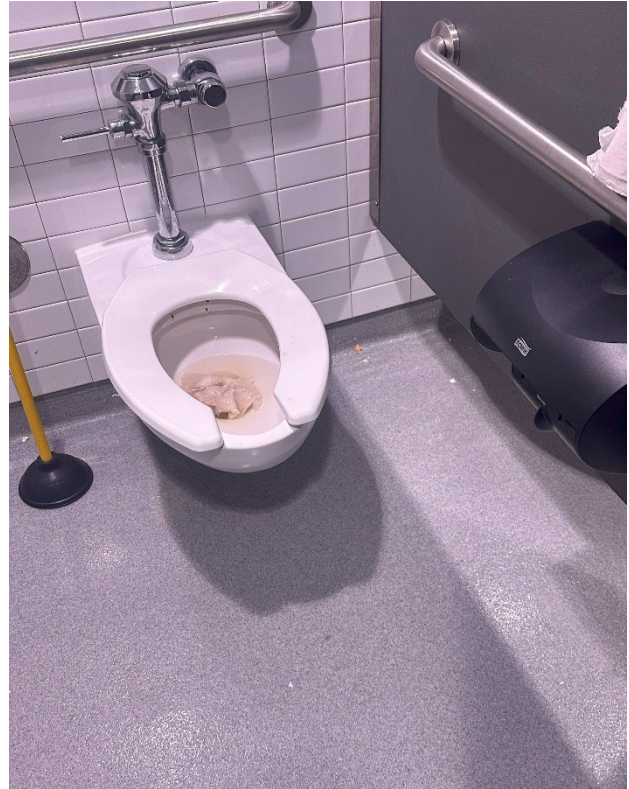


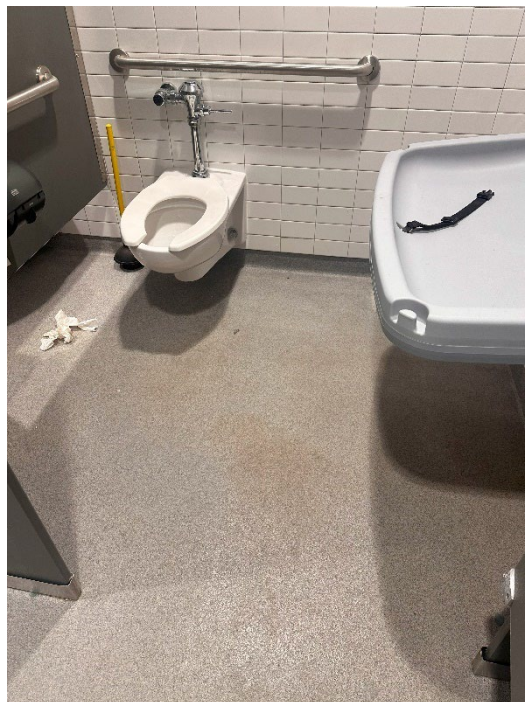
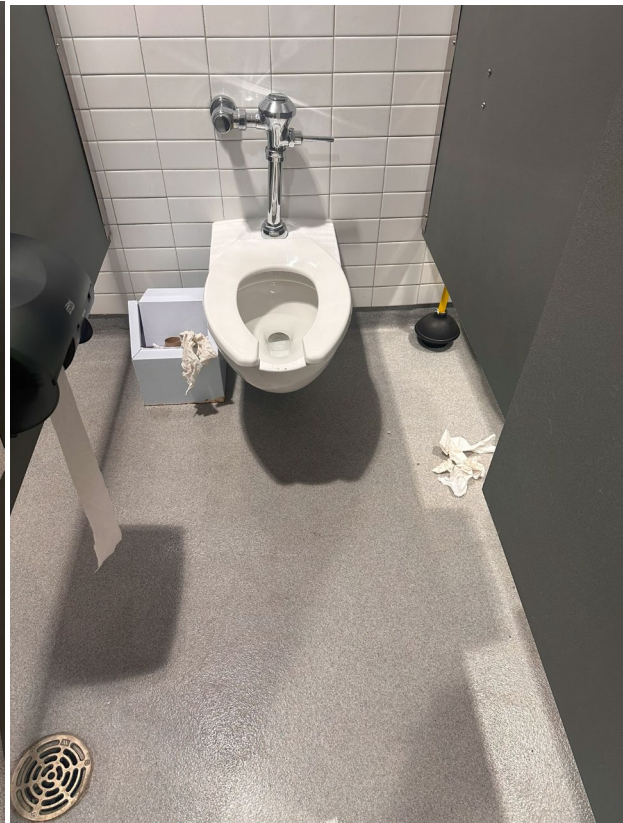




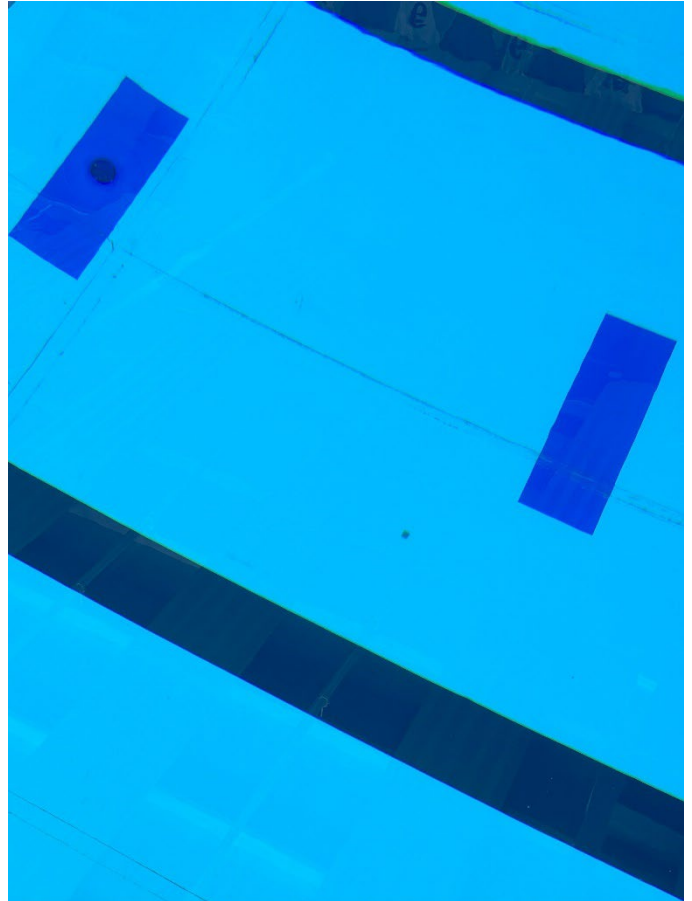


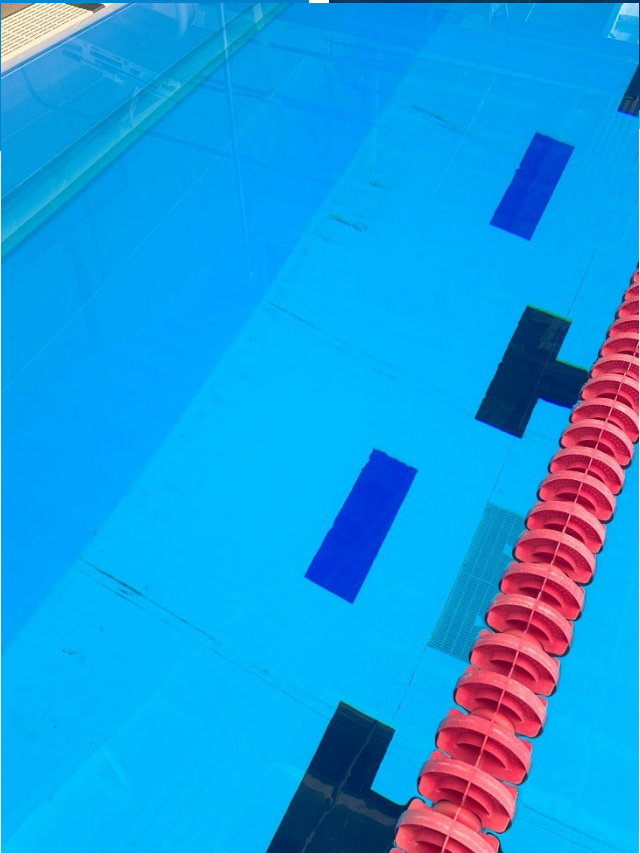
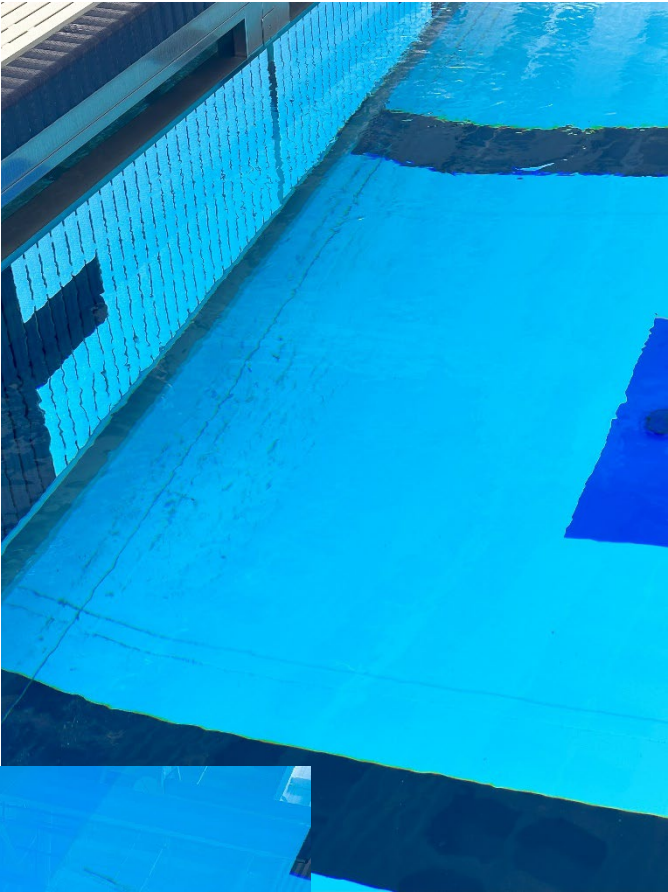


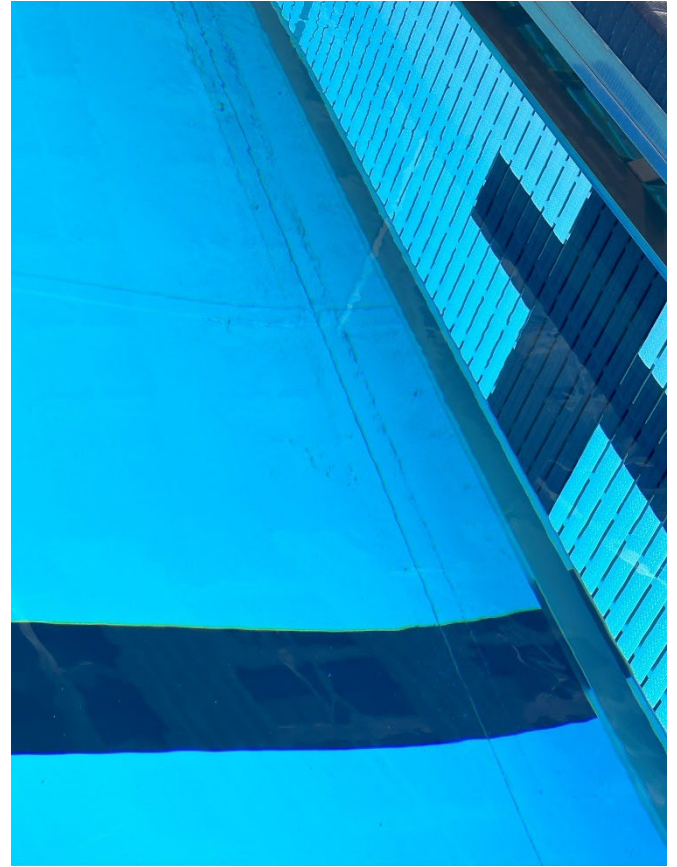
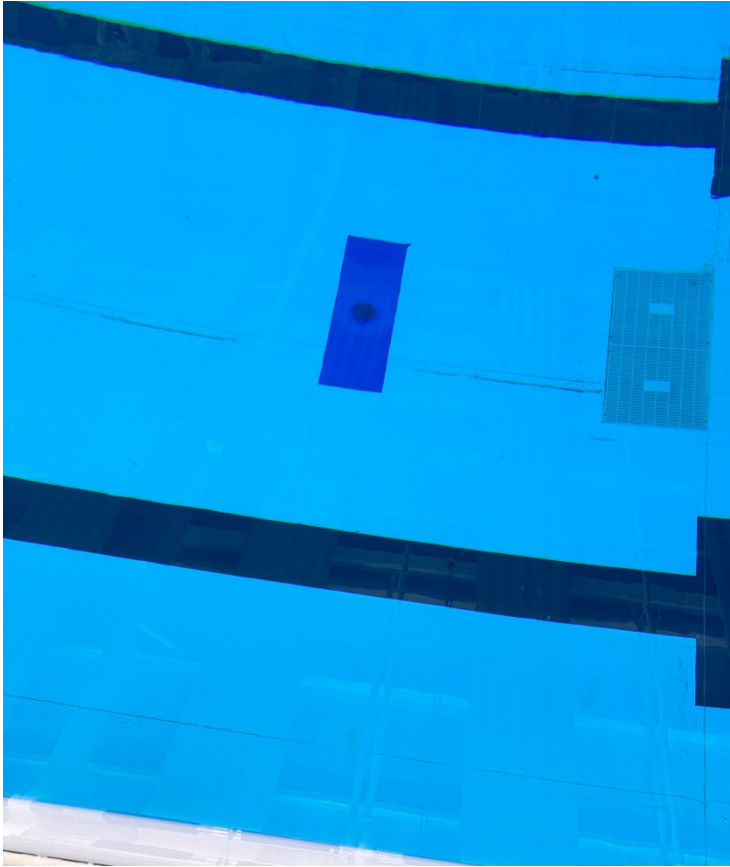




In addition to failing to maintain the Facility's locker rooms and bathrooms, WAQUA also continued to neglect the Facility's pools. The Facility's pools are often visibly unclean with dirt and debris on pool floors. On January 11, 2024, dirt and debris were visible on the pool floor.

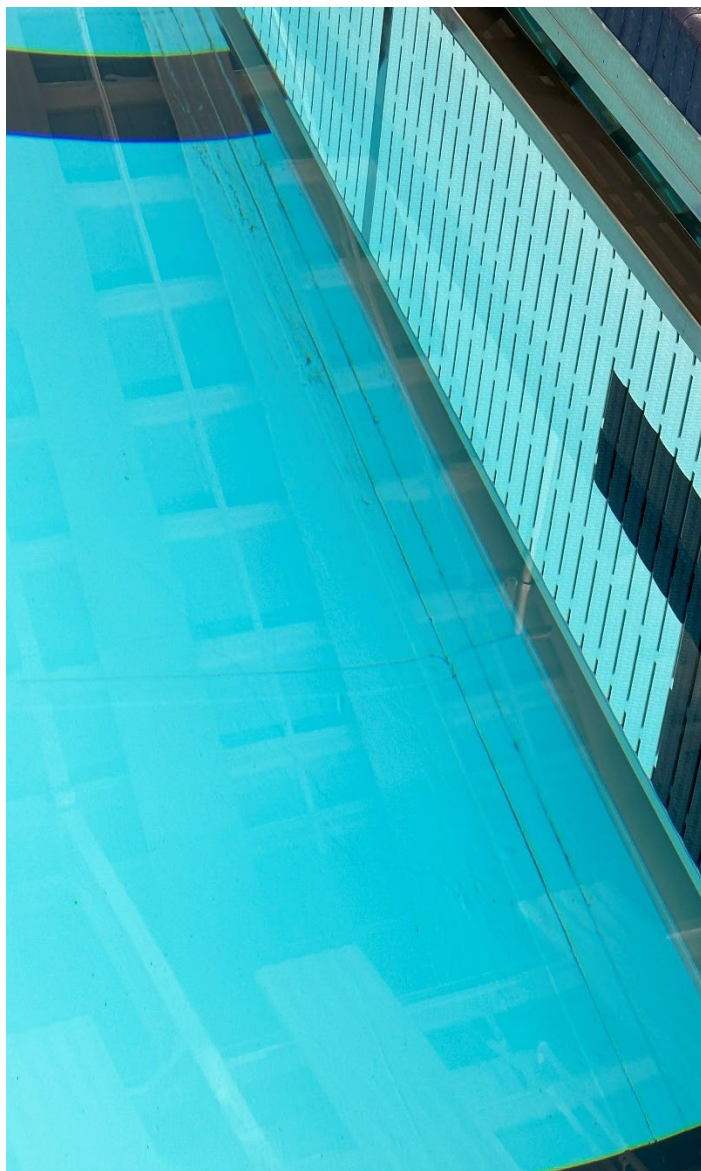


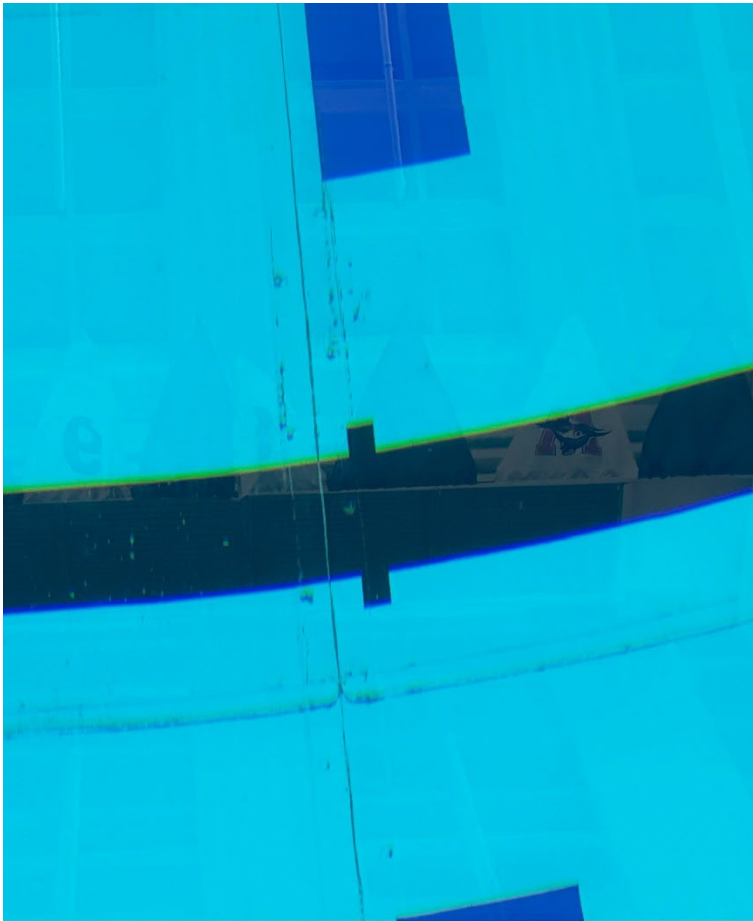




On January 19, 2024, WAQUA still had not remedied the dirt and debris on the pool floor. Dirt and debris on the pool floor remained visible from above the water.











In November 2024, dirt and trash could be seen on the pool floor from above the water on multiple days. By December 2024, the issue was still not resolved. On December 13, 2024, the bottom of the pool was still unclear.

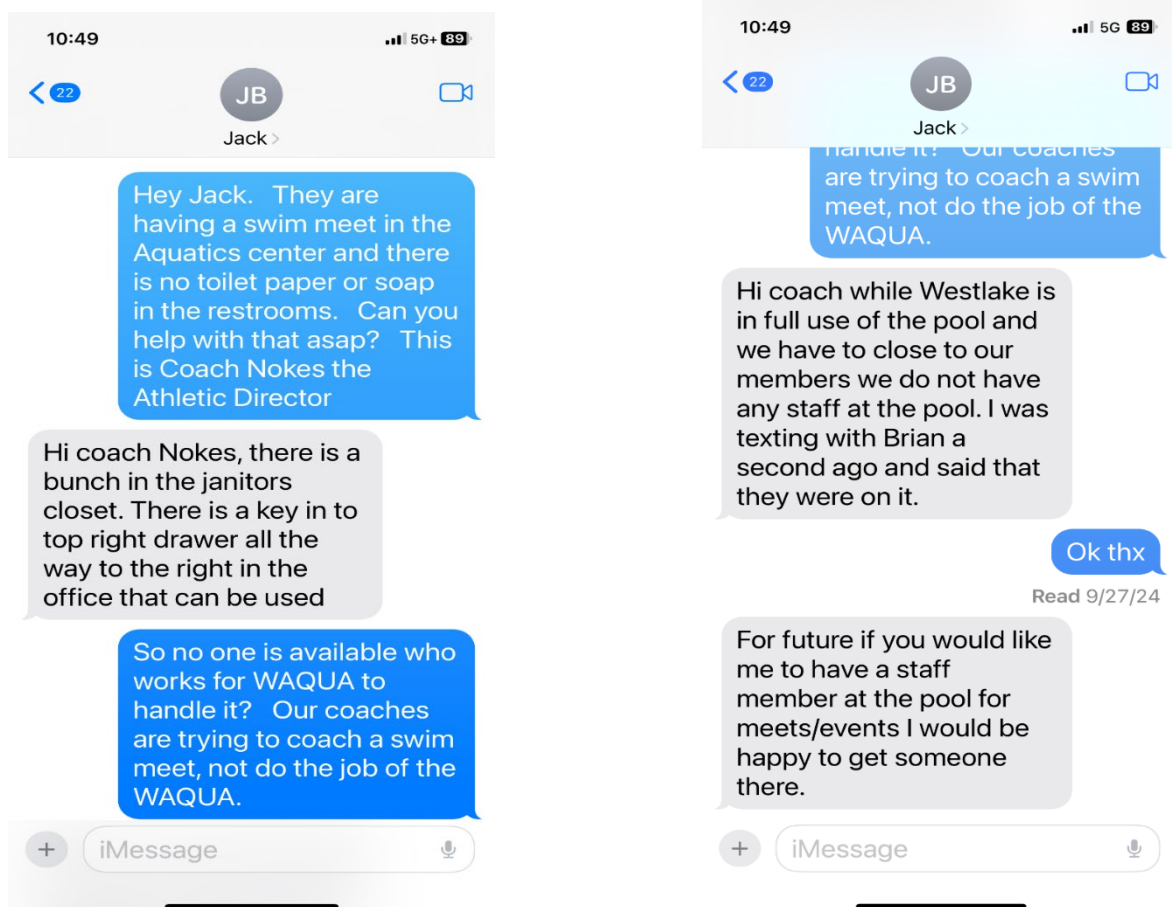
WAQUA received numerous written notices of default regarding the Facility's cleanliness and maintenance, and WAQUA repeatedly failed or refused to remedy the defaults. WAQUA's repeated and continuance defaults are grounds for immediate termination of the Agreement.

WAQUA Violated the Agreement by Failing to Staff the Facility

Pursuant to Section 5.05 of the Agreement, WAQUA "shall, at WAQUA's sole cost and expense, operate, repair and maintain the Property and Facility in a visibly attractive, well-groomed, safe, good and working condition at all times during the Agreement Term." Pursuant to Section 7.01 of the Agreement, "WAQUA shall manage and maintain the Facility *at all times* as necessary for EISD's athletics programs including but not limited to, swimming, diving, water polo, career and technology training requiring use of the Facility." (emphasis added) Section 4.07 states that WAQUA "shall provide all staff and vendors

necessary to carry out its obligations under th[e] Agreement.” WAQUA has failed to staff, manage, operate, and maintain the facility at all times, including during scheduled District athletics programs.

On September 27, 2024, no WAQUA staff were present during a District swim meet. There was no soap or toilet paper in the restrooms, and the facility was not maintained as necessary during an important District athletic program event. Additionally, WAQUA representative Jack Buch stated that WAQUA staff are never present during exclusive District use times and misinformed District personnel that the presence of WAQUA staff had to be requested. Jack Buch also did not acknowledge WAQUA’s failure to ensure the facility was in well-groomed, safe, good and working condition prior to the start of the meet.



WAQUA Failed to Comply with Safety Rules and Maintain the Safety and Security of the Facility

In addition to the services addressed above, WAQUA must comply with “all applicable ordinances and local, state and federal safety rules, as well as Eanes ISD Board Policy” in accordance with Section 4.05 of the Agreement. Section 4.06 also requires WAQUA to “take all actions to manage and maintain the safety and security of the Facility and its occupants.”

Local ordinances and state regulations require the Facility doors to remain closed at all times. 25 TEX. ADMIN. CODE 1, § 265.192; TEX. HEALTH AND SAFETY CODE § 757.006; Additionally, the Shared Use

Procedures agreed to on September 20, 2023, state that all garage and entry doors must remain closed at all times. [Exhibit 8].

On April 1, 2024, WAQUA personnel used an item to prop open the Facility's doors, leaving the entrance unsecured and open to the public all night. The District provided written notice of this violation to WAQUA on April 2, 2024. [Exhibit 9].

On April 3, 2024, WAQUA personnel again used an item to prop open the Facility's doors. The District provide written notice to WAQUA that same day, on April 3, 2024. [Exhibit 9].

On January 14, 2025, despite having received numerous notices regarding impermissible propping open of the Facility's doors, a WAQUA employee propped up the Facility's doors using a wet floor sign.





On January 15, 2025, a WAQUA employee again propped open the Facility doors using a wet floor sign.





On January 15, 2025, the District provided WAQUA written notice of repeated defaults caused by WAQUA's unsafe practice of propping open the Facility's doors. The District informed WAQUA that leaving open Facility entry doors violates local Travis County laws, state law, and District policy. WAQUA refused to keep the Facility's doors closed as required by local ordinances, state law, and the terms of the Agreement. [Exhibit 10].

WAQUA Violated Financial Reporting Requirements and the Revenue Sharing Agreement

In accordance with Section 6.01 of the Agreement, the District is entitled to a 20% share of the net revenues accrued by WAQUA for all uses of the Facility in a given Agreement, plus interest earned on such amounts, less all expenses incurred by WAQUA in the same year for performance of the Services ("net revenues"). WAQUA has not been complying with this revenue sharing obligation. On September 3, 2024, the District provided WAQUA written notice of default regarding WAQUA's net revenue calculations. [Exhibit 11]. WAQUA did not remedy the default within 30 days of written notice. Further, WAQUA has not paid the District the compensation owed to date.

Immediate Termination of the Agreement

WHEREAS WAQUA has not managed, operated, and maintained the facility as required by Agreement.

WHEREAS WAQUA does not staff the Facility as required by the terms of the Agreement.

WHEREAS WAQUA refuses to comply with state and local ordinances and the shared operating procedures.

WHEREAS WAQUA has not maintained financial records and shared net revenues as required by the Agreement.

WHEREAS WAQUA has repeatedly failed to comply with the terms of the Agreement.

WHEREAS the District provided written notices of default to WAQUA.

WHEREAS WAQUA has failed to remedy monetary and non-monetary defaults.

WHEREAS WAQUA is in default of the Agreement.

WHEREAS under Sections 12.01, 12.02, and 12.03 of the Agreement, Eanes ISD has the authority to terminate the Agreement without cost or penalty.

THEREFORE, Eanes ISD terminates the Agreement, effective August 1, 2025, and demands that you vacate the Facility and surrender the Facility to the District.

The District will give you until August 1, 2025 to remove your personal property and move out of the Facility. After August 1, 2025, the District will change the locks and access codes to the Facility.



The District reserves all further rights and remedies available under the Agreement, at law, or in equity, including, without limitation, collection of any sum or sums that are due and payable to the District under the Agreement, including the District's share of the net revenues for the current Agreement year (2025) as set for in Section 6.01, and reimbursement of all costs and expenses incurred by EISD, including court costs and reasonable attorney's fees, in (a) causing the removal of WAQUA's presence from the Property, (b) removing, storing and selling (if applicable), WAQUA's or any other occupant's personal property, (c) repairing or restoring the Facility to the condition in which WAQUA is required to deliver the Facility at the end of the Agreement Term, (d) paying or performing the underlying obligation that gave rise to the subject default and that WAQUA failed to pay or perform and (e) enforcing any of EISD's rights arising as a consequence of the Event of Default.

Very truly yours,

A handwritten signature in blue ink that reads "Holly McIntush".

Holly McIntush

THOMPSON & HORTON LLP

HGM/ka
Enclosures

Cc: Dr. Jeff Arnett, via email: jarnett@eanesisd.net
Audrey Hipp, via email: ahipp@eanesisd.net
Chris Scott, via email: cscott@eanesisd.net
James Spradley, via email: james spradley@eanesisd.net