

September 30, 2025

VIA ELECTRONIC MAIL

Mr. Christopher Robilotti
FOIL Officer
South Colonie Central School District
102 Loralee Drive
Albany, NY 12205
robilottic@scolonie.org

Re: Request Pursuant to the New York Freedom of Information Law for Records Concerning South Colonie Central School District's Policies and Practices Concerning Gender Identity

Dear Mr. Robilotti:

As a member of the public who is interested in compliance by state and local education authorities with the prohibition of sex-based discrimination in federally funded education programs and activities under Title IX of the Education Amendments of 1972 ("Title IX"), I am sending this request pursuant to the New York Freedom of Information Law ("FOIL") to learn more about the current status of South Colonie Central School District's ("South Colonie") policies regarding access to sex-separated intimate facilities in South Colonie's education programs and activities.

Background

Federal Administrative Title IX Complaints Against South Colonie

Beginning no later than December 2024, a male student (referred to here as "J.T."), a member of the Colonie Central High School Boys Track and Field Team, repeatedly used the female locker rooms where girls undress for track practice. At the time, J.T. was a junior, participated on the boys' team, and attends male track meets, banquets, and award ceremonies.¹

On December 17, 2024, Kevin Martin became aware that J.T. was using the same designated female-only locker room as Mr. Martin's then-15-year-old daughter (referred to here as "A.M.") and a large group of other girls.²

¹ Letter from Donald A. Daugherty, Jr., Senior Counsel, Litigation, Defense of Freedom Institute for Policy Studies, & Martha A. Astor, Counsel, Litigation, Defense of Freedom Institute for Policy Studies, to the Office for Civil Rights, U.S. Department of Education 2 (May 28, 2025), available at https://dfipolicy.org/wp-content/uploads/2025/05/Martin_NY-OCR-Complaint-Final-1.pdf.

² *Id.*

On March 26, 2025, Mr. Martin learned of another incident in which J.T. entered and used the locker room of the Colonie Central High School gym while at least ten female athletes, including A.M., were dressing for track practice. J.T. then left to practice with the boys' team. When Mr. Martin contacted school-district administrators to report the conduct and request that they address it, these administrators responded by explaining that the school would continue to allow J.T. to change in front of the female athletes in the girls' locker room as they dressed for practice and track meets and suggested that A.M. use an alternative accommodation.³

On March 26, 2025, Kevin Martin filed with the U.S. Department of Education's ("Department") Office for Civil Rights ("OCR") a complaint against South Colonie regarding the school district's failure to prohibit a biological male from using a girls' locker room with his daughter and other girls as they changed for track practice at Colonie Central High School.⁴

On April 1, 2025, Mr. Martin filed a formal complaint with South Colonie asserting that the school's failure to prevent a biological boy from using a girls' locker room while his daughter and other girls undressed violated Title IX. On April 14, 2025, South Colonie informed Mr. Martin that it had completed its investigation of the conduct and found, based on a review of New York state law, no Title IX violation.⁵ Since that time, J.T. has entered and used the girls' locker room and a girls' bathroom in the presence of female students. He has reportedly stared at the girls and approached them to speak to them in their sex-separated locker room as they attempt to change clothes for track practice. In response to a complaint from A.M., the Colonie Central High School girls' track coach reportedly told A.M. that J.T. could use female-designated intimate facilities during the day but did not have permission to do so after school because he identified as a boy for sporting events.⁶

Due to J.T.'s use of the girls' locker room, many of the girls on the track team, including A.M., have attempted to change in a single-user, "all-gender" bathroom, but the long line would make them late for practice. They then tried to use the only two stalls available in the locker room. The lines to enter the stalls were similarly long and posed the same problem, and they were forced to change in front of J.T. in order to avoid being late to practice. They tried to use the angles of the room and undressed quickly to shield themselves from his stares.⁷

On May 28, 2025, the Defense of Freedom Institute filed a supplemental complaint with OCR against South Colonie containing the facts above and calling on OCR to "place South Colonie on

³ *Id.* at 3.

⁴ *Id.* at 1.

⁵ *Id.* at 3–4.

⁶ *Id.* at 4.

⁷ *Id.* at 4–5.

clear notice that failure to comply with federal law in its policies will result in the withdrawal of federal funding.”⁸

Although it does not appear that South Colonie maintains a public-facing policy requiring that schools allow students to access intimate facilities on the basis of gender identity instead of sex,⁹ the school district has responded to media requests concerning the federal administrative complaints by pointing to state laws, including the Dignity for All Students Act and the Gender Expression Non-Discrimination Act, that it says require this policy.¹⁰

Trump Administration’s Enforcement of Title IX

On March 19, 2025, OCR issued a letter (“March 19 Letter”) to the Commissioner of the Maine Department of Education (“MDOE”) informing her of OCR’s determination that MDOE had not complied with Title IX because public K–12 school districts throughout Maine maintain policies or practices “that allow boys to participate in girls’ athletics programs and/or deny female students access to female-only intimate facilities”¹¹ Pointing to MDOE’s statewide guidance to schools requiring gender identity-based participation in school athletics programs and also indicating that “students must be permitted to use the bathroom and other sex-separated facilities in accordance with or corresponding most closely to their gender identity,”¹² OCR concluded that “Title IX simply does not permit the bait-and-switch of promising female student-athletes a girls’ competition *and a girls’ locker room* while actually permitting males to participate in the activity *or access the space*.”¹³ Because MDOE “has elected to direct and advise [school districts] to allow boys and men to participate in sports programs *and access intimate facilities* designated for girls and women,” OCR concluded that the state educational authority did not comply with Title IX.¹⁴

On April 11, 2025, the Department announced that it had referred its investigation of MDOE’s continuing noncompliance with Title IX to the U.S. Department of Justice “for further enforcement

⁸ *Id.* at 1.

⁹ *Id.* at 14 n.80.

¹⁰ See Jaryn Crouson, *Civil Rights Complaint Alleges Male Student “Switches Gender” to Watch Girls Change Despite Competing in Boys Sports*, DAILY CALLER (June 2, 2025), <https://dailycaller.com/2025/06/02/civil-rights-complaint-alleges-male-student-switches-gender-to-watch-girls-change-despite-competing-in-boys-sports/>.

¹¹ Letter from Bradley Burke, Reg’l Dir., Off. for C.R., U.S. Dep’t of Educ., to Pender Makin, Comm’r, Me. Dep’t of Educ. 1 (Mar. 19, 2025) (hereinafter “March 19 Letter”), *available at* <https://www.ed.gov/media/document/letter-of-finding-maine-doe-109602.pdf?source=email>.

¹² *Id.* at 7 (citing *LGBTQ+ School Resources*, ME. DEP’T OF EDUC., <https://www.maine.gov/doe/LGBTQ/staff> (last visited Mar. 21, 2025)).

¹³ *Id.* at 8 (emphases added).

¹⁴ *Id.* at 9.

action” and that it would “initiate an administrative proceeding to adjudicate termination of MDOE’s federal K–12 education funding, including formula and discretionary grants.”¹⁵

On July 25, 2025, OCR concluded its investigation of five school districts in Northern Virginia, finding that each school district maintained policies that violate Title IX because they “allow students to access intimate, sex-segregated facilities based on the students’ subjective ‘gender identity.’”¹⁶ At the time, OCR proposed to the school districts resolution agreements that would require them to “[r]escind the policies and/or regulations that allow students to access intimate facilities based on their ‘gender identity’ rather than their sex;” “[i]ssue a memorandum to each . . . school explaining that any future policies related to access to intimate facilities must be consistent with Title IX by separating students strictly on the basis of sex, and that Title IX ensures women’s equal opportunity in any education program or activity including athletic programs;” and “[a]dopt biology-based definitions of the words ‘male’ and ‘female’ in all practices and policies relating to Title IX.”¹⁷

The Northern Virginia local education agencies declined to sign OCR’s proposed resolution agreements by OCR’s deadline of August 15.¹⁸ In response, OCR placed these agencies on high-risk status “with the condition that all federal funding flowing to these districts is done by reimbursement only,” and OCR commenced administrative action “seeking suspension or termination of federal financial assistance” to the districts.¹⁹

In light of the Department’s enforcement posture on these issues, and in the face of the federal administrative complaints filed against it, it appears that South Colonie is risking sanctions from the Department, including the cessation of federal funding across the school system and other potential enforcement actions, by continuing to implement a policy allowing access to intimate facilities on the basis of gender identity instead of sex at its schools. For that reason, I am interested in inspecting records of South Colonie’s policies and communications relating to any guidance or policies it maintains regarding separation of intimate facilities on the basis of gender identity.

¹⁵ Press Release, U.S. Dep’t of Educ., U.S. Department of Education Announces Consequences for Maine’s Title IX Noncompliance (Apr. 11, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-announces-consequences-maines-title-ix-noncompliance>.

¹⁶ Press Release, U.S. Dep’t of Educ., U.S. Department of Education Finds Five Northern Virginia School Districts in Violation of Title IX (July 25, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-finds-five-northern-virginia-school-districts-violation-of-title-ix>.

¹⁷ *Id.*

¹⁸ Press Release, U.S. Dep’t of Educ., U.S. Department of Education Places Five Northern Virginia School Districts on High-Risk Status and Reimbursement Payment Status for Violating Title IX (Aug. 19, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-places-five-northern-virginia-school-districts-high-risk-status-and-reimbursement-payment-status-violating-title-ix>.

¹⁹ *Id.*

Requested Records

As an interested member of the public, I request that South Colonie produce the following records under FOIL.²⁰

1. Any records, including training materials, policies, and guidance, maintained by South Colonie from November 5, 2024, through the date of the search, relating specifically to the treatment of students in light of their gender identity, including but not limited to policies regarding access to intimate facilities on the basis of gender identity.
2. Electronic copies of all communications and correspondence (including but not limited to electronic mail [“email”], email attachments, texts, letters, memoranda, and other documentation), both internal and external, to or from South Colonie regarding the treatment of students in light of their gender identity, including but not limited to access to intimate facilities on the basis of gender identity, from November 5, 2024, through the date of the search.
3. Electronic copies of all communications and correspondence (including but not limited to electronic mail [“email”], email attachments, texts, letters, memoranda, and other documentation), both internal and external, to or from South Colonie regarding the enforcement by any federal agency, including but not limited to the Department, of Title IX from November 5, 2024, through the date of the search.
4. Electronic copies of all communications and correspondence (including but not limited to electronic mail [“email”], email attachments, texts, letters, memoranda, and other documentation) to or from the New York State Education Department, dated on or after November 5, 2024, that reference treatment of students in light of their gender identity, including but not limited to access to intimate facilities on the basis of gender identity.
5. Electronic copies of all communications and correspondence (including but not limited to electronic mail [“email”], email attachments, texts, letters, memoranda, and other documentation) to or from the South Colonie Teachers Association, dated on or after November 5, 2024, that reference treatment of students in light of their gender identity, including but not limited to access to intimate facilities on the basis of gender identity.
6. Electronic copies of all communications and correspondence (including but not limited to electronic mail [“email”], email attachments, texts, letters, memoranda, and other documentation) to or from the New York State Union of Teachers, dated

²⁰ N.Y. PUB. OFF. LAW §§ 84 *et seq.*

on or after November 5, 2024, that reference treatment of students in light of their gender identity, including but not limited to access to intimate facilities on the basis of gender identity.

For purposes of this request:

“Department” means the United States Department of Education.

“Intimate facilities” means any location designated for individuals to dress or undress with a reasonable expectation of privacy, including but not limited to bathrooms, locker rooms, showers, changing rooms, and lactation spaces.

“New York State Education Department” means the New York State Education Department and its commissioner, employees, contractors, consultants, attorneys, agents, and representatives.

“New York State Union of Teachers” means the New York State Union of Teachers and its employees, contractors, consultants, attorneys, agents, and representatives.

“South Colonie” means South Colonie Central School District; its employees, contractors, consultants, attorneys, agents, and representatives; and members of the South Colonie Central School District Board of Education.

“South Colonie Teachers Association” means the South Colonie Teachers Association and its employees, contractors, consultants, attorneys, agents, and representatives.

“Title IX” means Title IX of the Education Amendments of 1972, as amended.

FOIL requires that public agencies, including public school districts,²¹ “in accordance with [their] published rules, make available for public inspection and copying all records, except those records or portions thereof that may be withheld pursuant to the exceptions of rights of access”²²

“Record” means “any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.”²³

I request the following regarding the provision of the requested records:

²¹ See N.Y. PUB. OFF. LAW § 86(3).

²² N.Y. PUB. OFF. LAW § 87(2).

²³ N.Y. PUB. OFF. LAW § 86(4).

- I request that you provide any public record identified in the following electronic format, instead of in paper format: PDF format or all Microsoft Office formats, including Word, Excel, Access, and PowerPoint.²⁴
- South Colonie 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.
- South Colonie 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 South Colonie’s IT capabilities to conduct the search. To constitute an adequate search for responsive records, South Colonie 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.
- South Colonie should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding South Colonie’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 FOIL. South Colonie 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 South Colonie 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 direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- South Colonie 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 N.Y. PUB. OFF. LAW § 87(5)(a).

- South Colonie should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.²⁵
- If you contend that this request does not reasonably describe²⁶ identifiable public records, I request that you promptly assist by eliciting additional information that will clarify my request and more clearly identify the records I am seeking.
- If South Colonie determines that any portions of otherwise responsive records are statutorily exempt from disclosure, I request that South Colonie disclose reasonably segregable portions of the records.²⁷
- For any responsive records withheld in whole or part by South Colonie, South Colonie should provide a clear and precise enumeration of those records in index form presented with sufficient specificity and should identify the specific statute section/exemption that authorizes the withholding of the records.²⁸

Conclusion

I appreciate South Colonie's prompt attention to this request for records pursuant to FOIL, which will provide important information regarding South Colonie policies relating to gender identity and compliance with Title IX.

If you have any questions or I can further clarify my request, please contact me at your earliest convenience at pfzimmerman@gmail.com.

Sincerely,

Paul Zimmerman

²⁵ See N.Y. PUB. OFF. LAW § 87(2) ("A denial of access shall not be based solely on the category or type of such record and shall be valid only when there is a particularized and specific justification for such denial.").

²⁶ See N.Y. PUB. OFF. LAW § 89(3)(a).

²⁷ N.Y. PUB. OFF. LAW § 89(9).

²⁸ N.Y. PUB. OFF. LAW § 87(2).