



MEMORANDUM

PRIVILEGED & CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

TO: Dr. Antoinette Mitchell, State Superintendent of Education

FROM: Carol Epstein, General Counsel

DATE: November 3, 2025

RE: OSSE & Placing AirTags on School Buses

Introduction

The issue addressed here is whether the Office of the State Superintendent of Education (OSSE) may provide AirTags, or other trackable items, to parents of special education students riding OSSE buses to track their child while riding on the bus.¹ The short answer is that OSSE cannot do so without violating the protected privacy rights afforded students and parents under the Family Educational Rights and Privacy Act (FERPA).²

Discussion

FERPA protects student privacy by limiting who can access the student's education records, and the personally identifiable information (PII) contained therein, including student name, address, and date of birth).³ Under FERPA, an education record is any information recorded in any format, that is directly related to a student and is maintained by an educational agency or by a party acting for the agency or institution.⁴ Student addresses are PII that come from education records, and as such, are protected under FERPA.⁵ Any information protected by FERPA cannot be disclosed without consent from the parent, unless the situation falls within a FERPA exception to the consent requirement, as provided in 34 C.F.R. § 99.31.

¹ Similarly, OSSE cannot put an AirTag on a bus and provide the link/information to all of the parents with students on the bus.

² FERPA, 20 U.S.C. 1232g *et seq.* and implementing regulations at 34 CFR Part 99 *et seq.* FERPA provides rights to eligible students, parents, and legal guardians. However, for ease, we just use "parent(s)" in this memo.

³ *Id.*

⁴ 20 U.S.C. § 1232g(a)(4)(A) and implementing regulations at 34 C.F.R. 99.3.

⁵ OSSE receives student addresses from parents and LEAs. 34 C.F.R. § 99.3 defines Personally Identifiable Information to "include, but is not limited to—(a) the student's name; (b) The name of the student's parent or other family members; (c) The address of the student or student's family; . . ."

LEAs collect a significant amount of student PII from parents including student's name, address, and phone number(s). The directory information exception allows LEAs to disclose directory information without parental consent under specific conditions described in § 99.37.⁶ One of the conditions is "notice to parents of students in attendance"⁷ i.e., an LEA must provide parents a chance to opt out of the release of their student's information under the directory information exception.⁸ Failure to opt out is considered consent for the LEA to disclose directory information regarding their child.

Unlike an LEA, OSSE does not receive data directly from parents, rather, as an SEA, OSSE obtains its student education records (and student PII) from LEAs. Therefore, OSSE does not meet the conditions enumerated in the Directory Information exception, which precludes OSSE from disclosing information under the exception.⁹ OSSE transports students in special education door to door,¹⁰ and if OSSE provided parents with AirTags they would be able to track a bus route and be able to see when bus stops at each student's home. This would allow parents access to the addresses of other students on the bus, which is protected student PII under FERPA.

Conclusion

OSSE cannot provide parents with AirTags for their children for the purpose of using them to track their student on a bus because it would also allow them access to the entire bus route and addresses of the bus stops for other students, which would violate the privacy protections provided to student data under FERPA. In contrast, if LEAs transported students, they would be able to provide parents with AirTags to track their students on the bus, because unlike SEAs, LEAs can provide directory information without consent for those students whose parents have not opted out.

⁶ § 99.37 "What conditions apply to disclosing directory information?"

⁷ *Id.*

⁸ *Id.*

⁹ § 99.37 requires notice given to parents of students "in attendance". OSSE, unlike an LEA, does not have students in attendance as defined in § 99.3.

¹⁰ From the student's home to the student's school.