Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

OWASSO INDEPENDENT SCHOOL DISTRICT NO. I–011, AKA OWASSO PUBLIC SCHOOLS, ET AL. *v.* FALVO, PARENT AND NEXT FRIEND OF HER MINOR CHILDREN, PLETAN ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 00–1073. Argued November 27, 2001—Decided February 19, 2002

Teachers sometimes ask students, including respondent's children, to score each other's tests, papers, and assignments as the teachers explain the correct answers to the entire class. Claiming that such "peer grading" violates the Family Educational Rights and Privacy Act of 1974 (FERPA or Act), respondent filed a 42 U. S. C. §1983 action against the school district and school officials (petitioners). FERPA, *inter alia,* authorizes federal funds to be withheld from school districts that permit students' "education records (or personally identifiable information contained therein . . .)" to be released without their parents' written consent, 20 U. S. C. §1232g(b)(1); and defines education records as "records, files, documents, and other materials" containing information directly related to a student, which "are maintained by an educational agency or institution or by a person acting for such agency or institution," §1232(a)(4)(A). In granting petitioners summary judgment, the District Court held that grades put on papers by another student are not "education records." The Tenth Circuit reversed, holding that FERPA provided respondent with a cause of action enforceable under §1983, and finding that grades marked by students on each other's work are "education records," so the very act of grading is an impermissible release of information to the student grader.

Held: Peer grading does not violate FERPA. Pp. 3–9.

(a) This Court assumes, without deciding, that FERPA provides private parties with a cause of action enforceable under §1983.

Though that question is left open, the Court has subject-matter jurisdiction here because respondent's federal claim is not so completely devoid of merit as not to involve a federal controversy. Pp. 3–4.

(b) Petitioners and the United States contend that education records include only institutional records, *e.g.,* student grade point averages, standardized test scores, and records of disciplinary actions. But respondent, adopting the Tenth Circuit's reasoning, contends that an assignment satisfies §1232(a)(4)(A)'s definition as soon as another student grades it. That court determined that teachers' grade books and the grades within are "maintained" by the teacher and thus covered by the Act. The court recognized that teachers do not maintain the grades on individual student assignments until they have recorded them in the grade books. It reasoned, however, that if the teacher cannot disclose the grades once written in the grade book, it makes no sense to permit disclosure immediately beforehand. The court thus held that student graders maintain the grades until they are reported to the teacher. Two statutory indicators show that the Tenth Circuit erred. First, student papers are not, at that stage, "maintained" under §1232(a)(4)(A). That word's ordinary meaning is to preserve or retain. Even assuming that a grade book is an education record, the score on a student-graded assignment is not "contained therein," §1232g(b)(1), until the teacher records it. "Maintain" suggests FERPA records will be kept in a file in a school's record room or on a secure database, but student graders only handle assignments for a few moments as the teacher calls out the answers. The Tenth Circuit also erred in concluding that a student grader is "a person acting for" an educational institution, §1232g(a)(4)(A). That phrase connotes agents of the school. Just as it would be awkward to say students are acting for the institution when following their teacher's instruction to take a quiz, it is equally awkward to say they are acting for the institution when following their teacher's direction to score it. That process can be as much a part of the assignment as taking the test itself. This Court does not think FERPA prohibits such educational techniques. Moreover, saying that students are acting for the teacher in grading an assignment is different from saying they are acting for an educational institution in maintaining it. Other FERPA sections—*e.g.,* §1232g(b)(4)(A), which requires educational institutions to maintain a record of access kept with the student's education records—support this Court's interpretation. The instant holding is limited to the narrow point that, assuming a teacher's grade book is an education record, grades on students' papers are not covered by the Act at least until the teacher has recorded them. The Court does not reach the broader question whether the Act protects grades on individual assignments once they are turned in to teachers. Pp. 4–9.

Syllabus

233 F. 3d 1203, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment.