

## **Student Grading Does Not Violate FERPA**

As a result of the U.S. Supreme Court's decision on February 19, 2002, in *Owasso Independent School Dist. No. I-011 v. Falvo*, 2002 WL 232853 (U.S. 2002), educators will be happy to learn that the practice of having students grade each other's tests, assignments, etc., as the teacher provides the correct answers to the class does not violate the Family Educational Rights and Privacy Act (FERPA). The practice of having students grade each other's tests, assignments, etc., and then call out the grades to the teacher in class, recently was called into question when a parent of three public school students objected on the grounds that it embarrassed her children to have classmates hear their grades. After the district superintendent refused to end the practice, the parent filed suit against the school district under 42 U.S.C. § 1983, alleging that the grading practice violated her children's right to privacy under the Fourteenth Amendment and FERPA.

A federal district court had granted the school district's motion for summary judgment on the grounds: (1) that the grading practice did not implicate the student's right to privacy; and (2) that grades were not "educational records" under FERPA. The Tenth Circuit affirmed the district court's decision that the grading practice did not violate the student's Fourteenth Amendment right to privacy, but held that the grades were "educational records" under FERPA, and, therefore, the practice violated FERPA.

Fortunately, the U.S. Supreme Court reversed and held that student peer scoring of tests, assignments, etc., is not "maintaining" records relating to a student. The scoring of such work does not become an "educational record" protected by FERPA until the teacher records the grade in a recording device such as a grade book. The Court reasoned that student graders do not maintain papers as contemplated by FERPA because they only handle the documents for a few moments while the teacher calls out the answers. Additionally, a student acting for the teacher in grading is different from saying that they are acting for an educational institution in maintaining a record.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.