



EDUCATION PRACTICE

# ALERT

## “IT WAS A VERY STUPID THING TO DO, I’LL ADMIT”<sup>1</sup> BAD FACTS LEAD TO INDIVIDUAL LIABILITY FOR SCHOOL EMPLOYEES FOR FERPA VIOLATIONS

By Timothy E. Gilsbach

In an interesting but concerning case, a federal court found that individual employees of a school district may be held liable for violating the Family Educational Rights and Privacy Act (FERPA), not by a direct action under FERPA but rather under a common law negligence action and Section 1983 action.

In the case of *L.S. v. Mount Olive Board of Educ.*, (D.N.J. 2011), the court was faced with what it described as an “ill-conceived notion to use a 10th grade student’s confidential psychiatric evaluation as a tool to teach the famous J.D. Salinger novel, *The Catcher in the Rye*, to an 11th grade English class.” The assignment at issue started off innocently enough, requiring students in the English class prepare a psychological or psychiatric evaluation of Holden Caulfield, the novel’s main character. Apparently believing it might be helpful for the class to have a model to work from, the classroom teacher approached a school psychologist and asked if she had an example the students could use. The school psychologist provided a copy of the student-plaintiff’s most recent evaluation, which the teacher took, redacted and then distributed to the class. However, despite the redaction of some information, the evaluation still contained significant information about the student-plaintiff, including her age, religion, grade, family members, physical conditions and psychiatric history, among other things. Within that class session, one of the students, who was friends with student-plaintiff, was able to identify the student from the information that remained.

The court noted that while individual school employees could not be sued under IDEA, as it does not provide for monetary damages, or FERPA, as it does not allow for a private right of action, individuals could be sued for common law negligence and under Section 1983. The court found, not surprisingly, that the actions of the teacher and school psychologist clearly violated the duty of care they owed to the student-plaintiff to maintain the confidentiality of the student’s records. In addition, the court found the plaintiffs could pursue a Section 1983 claim against the teacher and school psychologist because they intentionally released the student’s private information in violation of the student’s constitutional right to privacy.

While the particularly egregious facts of this case may be what drove the result, this case is a warning to school employees that under certain circumstances they could be held liable in their individual capacity for the improper release of a student’s records. Accordingly, it is imperative that school entities provide proper training and oversight to school employees about handling student records and protecting student privacy.

For more information about this alert, please contact Timothy E. Gilsbach at 610.397.6511 or [tgilsbach@foxrothschild.com](mailto:tgilsbach@foxrothschild.com) or any member of Fox Rothschild’s [Education Practice Group](#).

<sup>1</sup> J.D. Salinger, *The Catcher in the Rye*, Chp. 5 ¶ 7 (1951).