

SCALIA, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 00–1073

OWASSO INDEPENDENT SCHOOL DISTRICT
No. I–011, AKA OWASSO PUBLIC SCHOOLS,
ET AL., PETITIONERS *v.* KRISTJA J. FALVO,
PARENT AND NEXT FRIEND OF HER MINOR
CHILDREN, ELIZABETH PLETAN,
PHILIP PLETAN, AND
ERICA PLETAN

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

[February 19, 2002]

JUSTICE SCALIA, concurring in the judgment.

I agree with the Court that peer-graded student papers do not constitute “education records” while they remain in the possession of the peer grader because, as the Court explains, a student who grades another’s work is not “a person acting for” the school in the ordinary meaning of that phrase. *Ante*, at 6–7. I cannot agree, however, with the other ground repeatedly suggested by the Court: that education records include only documents kept in some central repository at the school. *Ante*, at 6 (“The word ‘maintain’ suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database It is fanciful to say [student graders] maintain the papers in the same way the registrar maintains a student’s folder in a permanent file”), 8 (“FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar . . .”).

As the Court acknowledges, *ante*, at 2, 5, Congress expressly excluded from the coverage of FERPA “records of

instructional . . . personnel . . . which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute,” 20 U. S. C. §1232g(a)(4)(B)(i). Respondent argues that this exception, which presumably encompasses many documents a teacher might create and keep in the classroom, including a grade book, would be rendered superfluous if education records included only “institutional records kept by a single central custodian, such as a registrar.” We do not, of course, read statutes in such fashion as to render entire provisions inoperative. *United States v. Nordic Village, Inc.*, 503 U. S. 30, 35–36 (1992).

The Court does not explain why respondent’s argument is not correct, and yet continues to rely upon the “central custodian” principle that seemingly renders the exception for “records of instructional . . . personnel” superfluous. Worse still, while thus relying upon a theory that plainly excludes teachers’ grade books, the Court protests that it is not deciding whether grade books are education records, *ante*, at 6. In my view, the Court’s endorsement of a “central custodian” theory of records is unnecessary for the decision of this case, seemingly contrary to §1232g(a)(4)(B)(i), and (when combined with the Court’s disclaimer of any view upon the status of teachers’ grade books) incurably confusing. For these reasons, I concur only in the judgment of the Court.