

Dear Faculty,

The Florida Legislature passed several laws affecting higher education in its most recent session. I wanted to update you on several changes that may be of particular importance to you as faculty.

House Bill 311 – Public Records Exception

House Bill 311 was signed on June 11, 2021, with an effective date of July 1. This statute makes it clear that a faculty member's quizzes and tests are not subject to a public records request.

House Bill 7017 – Foreign Influence

House Bill 7017, entitled "An Act Relating to Foreign Influence," was signed by the Governor on June 7, 2021, with an effective date of July 1. The law has several requirements for the University as it relates to foreign gifts and contracts, international cultural agreements, and foreign gift reporting.

For faculty, one piece we wanted to call to your attention is the requirement that the University screen certain individuals who will be hired to perform or assist with research, both at the faculty and student level. By state law, the University must now screen the following individuals prior to interviewing or offering them a job in a research or research-support position, or providing access to research data or activities or other sensitive data:

1. Citizens of a foreign country who are not permanent residents of the United States; and
2. U.S. citizens or permanent resident who have either:
 - a. Any affiliation with an institution or program that is a Foreign Country of Concern; or
 - b. 1 year of prior employment or training in a Foreign Country of Concern (unless they were there via the U.S. Government).

Per the statute, Foreign Countries of Concern are China, Russia, Iran, North Korea, Cuba, Venezuela, and Syria.

This screening requirement may lengthen the time between posting a position and filling it. Therefore, we encourage departments to submit such positions as early as possible to allow for the additional screening steps. Departments may not and should not structure searches to avoid individuals who would be subject to screening; the University encourages and is legally bound to welcome all qualified applicants to apply to contribute to our diverse community.

If you have questions regarding this law, please contact Dr. John Kantner.

House Bill 233 – Intellectual Freedom, Shielding, Recording of Lectures

House Bill 233 was signed by the Governor on June 23, 2021, with an effective date of July 1. Several different components of this law affect the University:

Intellectual Freedom and Viewpoint Diversity Assessment

The Board of Governors has been directed to create a survey for the University community. Per the statute, the survey is to consider the extent to which competing ideas and perspectives are presented. It

is also to consider the extent to which members of the University community, including students, faculty, and staff, feel free to express their beliefs and viewpoints on campus and in the classroom.

We will remain in communication with the Board of Governors on this survey and how it is to be administered. We will share additional information once it becomes available.

Shielding

The new legislation prohibits the University from shielding students, faculty, or staff from free speech protected under the First Amendment to the United States Constitution, Article I of the State Constitution, or Florida Statute § 1004.097 (regarding free expression on campus). Per the statute, “Shield” means to limit students’, faculty members’, or staff members’ access to, or observation of, ideas and opinions that they may find uncomfortable, unwelcome, disagreeable, or offensive.

At this time, it appears that this shielding language reiterates the University’s current commitment to the First Amendment. For example, in outdoor areas such as on the Green, the University will continue to allow groups to make presentations even though they may offend listeners, so long as they are in compliance with the University’s regulations and the law. The shielding language also does not alter our dedication to academic freedom or our approach to First Amendment issues provided by federal law. The shielding language has not transformed the classroom into a public forum and faculty still control class time. Faculty may still provide content warnings for courses and individual materials.

While in the classroom, faculty should be mindful that students are allowed to comment when discussion is invited, and those comments should not be avoided or limited solely because it might offend or make others uncomfortable. Faculty remain able to limit or prohibit comments for other reasons, such as if excessive comments are curtailed because class time must be used for class topics, the comments are off-topic, and other typical principles applying to classroom management.

The University anticipates that the meaning of “shielding” will become clearer in the coming weeks and months and will share updates once information becomes available.

Clarification of Faculty Speech as Expressive Speech

The Legislation explicitly recognized that faculty have an expressive right in faculty research, lectures, writings, and commentary, whether published or unpublished.

Because faculty have an expressive right in their research, lectures, writing, and commentary, the University does not interpret the shielding prohibition as requiring faculty to present all sides to an issue. Please note that under the First Amendment, to be protected, faculty comments in the classroom must still be germane to the course.

Recording of Lectures

House Bill 233 authorizes students to record video or audio of class lectures for the following reasons: (A) their own personal educational use; (B) in connection with a complaint to the University; or (C) as evidence in, or in preparation for, a criminal or civil proceeding. Even if the recording is permitted, it may not be published without the consent of the lecturer.

To be clear, House Bill 233 does not allow a student to publish without consent a recorded lecture to social media, YouTube, and so forth. The University is amending the Student Code of Conduct to make clear that such conduct can lead to both discipline under the Code and/or potential legal action by the aggrieved faculty member.

The University has worked with other State University System and Florida College System counterparts to help bring further clarity to the meaning of this section of House Bill 233. The University is adopting the following definition of “class lecture” for purposes of House Bill 233:

A class lecture is defined as a formal or methodical oral presentation as part of a University course intended to present information or teach enrolled students about a particular subject. Class lectures may be presented in person, via videoconferencing platforms such as Microsoft Teams or Zoom, via pre-recorded materials hosted in Canvas, via a video-hosting platform such as YouTube, or any other means of providing the lecture.

The following are not considered to be part of a “class lecture”: Class activities other than class lectures, including but not limited to lab sessions, student presentations (whether individually or part of a group), class discussion (except when incidental to and incorporated within a class lecture), facilitated discussions such as in a seminar, clinical presentations such as patient history, academic exercises involving student participation, test, or examination administrations, field trips, and conversations between students in the class or between a student and the faculty member.

Faculty may, but are not required to, allow recording of class activities that are not “class lectures.” We encourage faculty to clearly express their expectations to the class via their syllabus and other course materials. Some students may feel passionately about recording classes, so faculty may want to consider ways to reduce confusion and conflict, such as allowing students to record classes per the UFF’s Preliminary Guidance shared on July 2, 2021, or considering ways to minimize the extent to which students would have to be told during a single class session to turn off, or turn back on, recordings.

If you have questions about whether your planned course activities constitute a lecture or not, please contact Dr. Gordon Rakita.

We have created the following FAQ for Faculty that will be hosted on Academic Affairs site:

FAQ FOR FACULTY

Faculty may have questions in light of House Bill 233 (2021) and the permission it gives to students to record lectures. The University is providing this FAQ to help answer commonly asked questions.

What can students record?

Students may audio or video record a class lecture, defined as a formal or methodical oral presentation as part of a University course intended to present information or teach enrolled students about a particular subject. Class lectures may be presented in person, via videoconferencing platforms such as Microsoft Teams or Zoom, via pre-recorded

materials hosted in Canvas, via a video-hosting platform such as YouTube, or any other means of providing the lecture.

The following are not considered to be part of a “class lecture”: Class activities other than class lectures, including but not limited to lab sessions, student presentations (whether individually or part of a group), class discussion (except when incidental to and incorporated within a class lecture), facilitated discussions such as in a seminar, clinical presentations such as patient history, academic exercises involving student participation, test, or examination administrations, field trips, and conversations between students in the class or between a student and the faculty member.

Faculty may, but are not required to, allow recording of class activities that are not “class lectures.” We encourage faculty to clearly express their expectations to the class via their syllabus and other course materials. Some students may feel passionately about recording classes, so faculty may want to consider ways to reduce confusion and conflict, such as allowing students to record classes per the UFF’s Preliminary Guidance shared on July 2, 2021, or considering ways to minimize the extent to which students would have to be told during a single class session to turn off, or turn back on, recordings.

Does “class lectures” include guest lectures?

Yes.

Do students have to ask permission to record?

No, students do not need to ask for permission to record the class lecture, as long as they are making the recording for a permitted purpose.

Is there anything that students are not allowed to record?

Faculty may restrict students from recording lab activities, student presentations (whether individually or part of a group), facilitated discussions such as in a seminar, clinical presentations such as patient history, test or examination administrations, and conversations between students in the class or between a student and the faculty member.

I allow my students to freely ask questions during my class lectures. Is this back-and-forth exchange considered class lecture?

In general, class discussions are not part of the definition of “class lecture” unless the discussion is incidental to and incorporated within a class lecture. If students ask clarifying questions during the class lecture, and back and forth discussion results on that topic of the lecture, that back-and-forth exchange would be considered incidental to and incorporated within a class lecture and properly subject to recording. If students ask questions or engage in conversation with the faculty member about the lecture topic during a distinct discussion portion of class following a class lecture, that back-and-forth exchange would not be considered part of the class lecture and recording may be prohibited if the faculty member chooses to prohibit it.

What are the permitted purposes for students making the recording?

There are three permitted purposes for students making the recording: (1) personal educational use, (2) for use in a complaint against the institution, or (3) for use as evidence in a civil or criminal proceeding. Students may not record for any other purpose without the written consent of the faculty member.

Are there any restrictions to the use of the recordings?

Yes, recordings made may not be used to engage in academic dishonesty, may not be used as a substitute for participation in class, and may not be published or shared in any way without the faculty member’s written consent, unless the student is sharing the recording in connection with a complaint to the University, or as evidence in a criminal or civil proceeding.

Does this law change how students may behave in the classroom?

No, students must adhere to classroom behavioral expectations while recording; recording that disrupts the learning environment may violate the Student Code of Conduct.

Are there any other reasons a student may record?

Recording may be a part of an accommodation granted by Student Accessibility Services. If that is the case, you will be contacted by Student Accessibility Services about these accommodations. When a recording is permitted as an accommodation, faculty generally may not instruct the student with the accommodation to stop recording during a class session.

I am not sure if what I am planning for my class is a “class lecture.” Who can I ask?

If you have questions about whether your planned course activities constitute a lecture or not, please contact Dr. Gordon Rakita.

I learned that a student inappropriately recorded and/or published a recording. Is it mandatory that I report it to the Office of Student Accountability and Resolution?

No. For example, faculty may, if they desire, have a direct conversation with the student and instruct them to stop the inappropriate behavior. They could use the conversation as an educational opportunity. In addition, or in the alternative, they may refer the matter to the Office of Student Accountability and Resolution. Finally, House Bill 233 provides faculty with the right to bring a private lawsuit against an individual who inappropriately publishes video or audio recorded in a classroom if desired.

Faculty may utilize the following example syllabus statement:

EXAMPLE SYLLABUS STATEMENT

Students may, without prior notice, record video or audio of a class lecture for a class in which the student is enrolled for their own personal educational use. A class lecture is defined as a formal or methodical oral presentation as part of a University course intended to present information or teach enrolled students about a particular subject. Class lectures may be presented in person, via videoconferencing platforms such as Microsoft Teams or Zoom, via pre-recorded materials hosted in Canvas, via a video-hosting platform such as YouTube, or any other means of providing the lecture.

Recording class activities other than class lectures is prohibited, including but not limited to lab sessions, student presentations (whether individually or part of a group), class discussion (except when incidental to and incorporated within a class lecture), facilitated discussions such as in a seminar, clinical presentations such as patient history, academic exercises involving student participation, test, or examination administrations, field trips, and conversations between students in the class or between a student and the faculty member. Recordings may not be used as a substitute for class participation and class attendance and may not be published or shared without the written consent of the faculty member. Failure to adhere to these requirements may constitute a violation of the Student Code of Conduct.

For your information, the following additions will be made to the Student Code of Conduct:

ADDITIONS PENDING TO THE STUDENT CODE OF CONDUCT

A student may audio or video record a class lecture in which the student is enrolled for the following purposes:

- (a) personal educational use of the student;
- (b) in connection with a complaint to the University; or
- (c) as evidence in, or in preparation for, a criminal or civil proceeding.

A class lecture recording may not be published without the written consent of the faculty member, except when disclosed in connection with a complaint to the University or used as evidence in a criminal or civil proceeding. If you wish to make a complaint to the University relating to a recording, please first contact the Dean of Students, who will direct you to the appropriate office for your particular complaint.

A “class lecture” is a formal or methodical oral presentation as part of a University course intended to present information or teach enrolled students about a particular subject. Class lectures may be presented in person, via videoconferencing platforms such as Microsoft Teams or Zoom, via pre-recorded materials hosted in Canvas, via a video-hosting platform such as YouTube, or any other means of providing the lecture.

Faculty may restrict recording class activities other than class lectures, such as lab sessions, student presentations (whether individually or part of a group), class discussion (except when incidental to and incorporated within a class lecture), facilitated discussions such as in a seminar, clinical presentations such as patient history, academic exercises involving student participation, test, or examination administrations, field trips, and

conversations between students in the class or between a student and the faculty member. Failure to adhere to these requirements may constitute a violation of the Student Code of Conduct.

To “publish” means to share, transmit, circulate, distribute, or otherwise provide access to the recording, regardless of format or medium, to another person, or persons, including but not limited to another student in the class. Additionally, a recording, or transcript of the recording, is published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited social media, book, magazine, newspaper, leaflet, picket signs, or any mode of print.

Inappropriate recording is a violation of the Student Code of Conduct and may also subject a student to a lawsuit from a person injured by the publication. For clarity, examples of conduct that would violate the recording rule include, but are not limited to the following:

- A student recording a lecture and then uploads it to YouTube or their social media account without the permission of the instructor.
- A student recording the administration of an exam, which is not a class lecture, without permission.
- A student recording a professor during their office hours without permission.

We have created the following FAQ for Students that will be hosted on the Dean of Students’ site:

FAQ FOR STUDENTS

In 2021, the Florida Legislature passed House Bill 233 (2021). This law gives permission to students to record class lectures. The University is providing this FAQ to help answer commonly asked questions.

Do I need my professor’s consent to record class lectures?

No, so long as you are enrolled in the class and are recording the lecture for one of the permitted purposes listed in the statute. You have the right to record class lectures for one of three purposes: (1) your own personal educational use; (2) in connection with a complaint to the University; or (3) as evidence in, or preparation for, a civil or criminal proceeding. As long as you are making the recording for one of these purposes, you do not need the faculty member’s consent to record the class lecture. Please keep in mind that recordings may not be used to engage in academic dishonesty or as a substitution for participation in class.

What is a “class lecture”?

A class lecture is defined as a formal or methodical oral presentation as part of a University course intended to present information or teach enrolled students about a particular subject. Class lectures may be presented in person, via videoconferencing platforms such as MS Teams or Zoom, via pre-recorded materials hosted in Canvas, via a video-hosting platform such as YouTube, or any other means of providing the lecture.

The following are not considered to be part of a “class lecture”: Class activities other than class lectures, including but not limited to lab sessions, student presentations (whether individually or part of a group), class discussion (except when incidental to and incorporated within a class lecture), facilitated discussions such as in a seminar, clinical presentations such as patient history, academic exercises involving student participation, test, or examination administrations, field trips, and conversations between students in the class or between a student and the faculty member.

Faculty may, but are not required to, allow recording of class activities that are not “class lectures.”

Does “class lectures” include guest lectures?

Yes.

My professor usually combines class lecture with a group discussion. Can I record this group discussion?

In general, class discussions are not part of the definition of “class lecture” unless the discussion is part of a class lecture. If students ask clarifying questions during the class lecture, and back and forth discussion results on that topic of the lecture, that back-and-forth exchange would be considered part of a class lecture and properly subject to recording. If students ask questions or engage in conversation with the faculty member about the lecture topic during a distinct discussion portion of class following a class lecture, that back-and-forth exchange would not be considered part of the class lecture and recording may be prohibited if the faculty member chooses to prohibit it.

My friend was sick and missed class. Can I share my recording of the class lecture with them?

No, not without the faculty member's written consent. While you may record the class lecture, you may not publish the recording without permission. In this context, the word “publish” means to share, transmit, circulate, distribute or otherwise provide access to the recording, regardless of format or medium, to another person (or other persons), including but not limited to another student in the class. Additionally, a recording, or transcript of the recording, is published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited social media, book, magazine, newspaper, leaflet, picket signs, or any mode of print.

Are there any places I can share the recording without my faculty member’s permission?

Yes, you may share the recording to the University in connection with a complaint to the University, or as evidence during civil or criminal legal proceeding. If you wish to make a complaint to the University relating to a recording, please first contact the Dean of Students, who will direct you to the appropriate office for your particular complaint.

What are some examples of prohibited conduct?

For clarity, examples of conduct that would violate the recording rule include, but are not limited to:

- A student recording a lecture and then uploads it to YouTube or their social media account without the permission of the instructor.
- A student recording the administration of an exam, which is not a class lecture, without permission.
- A student recording a professor during their office hours without permission.

What happens if I share my recording of a class lecture without getting permission first?

If you do publish your recording of a class lecture when not permitted, you could face a charge for violating the Student Code of Conduct or a lawsuit. House Bill 233 states that your unauthorized use of the recording allows the faculty member to take you to court for damages, including attorneys' fees, totaling as much as \$200,000.00.

How does HB 233 affect my accommodations granted through Student Accessibility Services?

If you have an accommodation through Student Accessibility Services to record class activities, that will not change. However, you should be sure not to share the recordings without the faculty member's written consent. Please contact Student Accessibility Services with any questions about your accommodation.