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TO: Bret Danilowicz, Provost and Vice President, Academic Affairs

FROM: Office of the General Counsel

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SUBJECT: First Supplemental FAQ on Student Recordings of Class Lectures

Under a new law recently enacted by the Florida Legislature, a state university student may, without prior notice, audio or video record a class lecture for a course in which the student is enrolled if the recording is for one of the following purposes: (1) personal educational use of the student; (2) in connection with a complaint to the university where the recording is made; or (3) as evidence in, or in preparation for, a criminal or civil proceeding. On July 13, 2021, the Office of the General Counsel issued guidance on student recordings of class lectures that included definitions and FAQs on the university's implementation of these new statutory requirements. The following supplemental guidance is provided in an effort to address a number of questions received from faculty and staff since the issuance of the July 13, 2021 guidance.

FIRST SUPPLEMENTAL FAQ ON STUDENT RECORDINGS OF CLASS LECTURES

The July 13, 2021 FAQ states that a student's failure to adhere to the requirements for recording class lectures may constitute a violation of the University's Student Code of Conduct and/or the Code of Academic Integrity. How will those potential violations be handled, and what are the potential sanctions?

All student conduct actions at FAU are governed by the Student Code of Conduct, [Regulation 4.007](#), and all potential violations are stated in section (5), beginning on page 6 of the regulation. Potential sanctions for substantiated violations of the Code of Conduct are stated in section (13)(b), beginning on page 23 of the regulation. Additionally, FAU's Code of Academic Integrity, [Regulation 4.001](#), prohibits cheating, plagiarism and other forms of dishonesty. The Code of Conduct and the Code of Academic Integrity remain fully applicable to misconduct related to class lecture recordings.

If a recording is published for any unauthorized reason and the professor seeks legal action against the student, does the university provide representation?

The university is not authorized to pursue legal action on behalf of individual faculty, staff members or students.

What happens if a complaint is filed against a faculty member based on a classroom recording?

All existing procedures and due process protections provided under university regulations, policies, and relevant collective bargaining agreement provisions remain applicable to all complaints involving university faculty or staff.

If a student records a class lecture and other students are heard or seen in the recording, is that a violation of student privacy?

No. Student recordings are not “educational records” as defined under the Family Educational Rights and Privacy Act (FERPA). In order for FERPA to apply, a recording must be (1) directly related to a student; AND (2) maintained by an educational agency or institution or by a party acting for the agency or institution (20 U.S.C. 1232g(a)(4)(A); 34 CFR § 99.3 “Education Record”). For more details and examples provided by the U.S. Department of Education, please visit [FAQs on Photos and Videos under FERPA | Protecting Student Privacy \(ed.gov\)](#).

Are guest speakers considered lecturers?

If the guest speaker is presenting material that meets the definition of a class lecture as described in the July 13, 2021 guidance, then students are allowed to record that class lecture consistent with the requirements of the statute. It is recommended that guest speakers who are conducting “class lectures” be notified of the students’ right to record, especially in cases where the speaker may share proprietary information about their research or business. Keep in mind, however, that the statute applies only to recordings of “a class lecture for a course in which the student is enrolled,” and does not apply to FAU events or extra-curricular activities in which students are not “enrolled.”

Can faculty state in the syllabus that the class is discussion-based and therefore exempt from the policy?

As stated in the July 13, 2021 guidance, “class lecture” does not include student presentations (whether individually or as part of a group), class discussion (except when incidental to and incorporated within a class lecture), labs, clinical presentations such as patient history, academic exercises involving student participation, test or examination administrations, field trips, and private conversations between students in the class or between a student and the lecturer. In determining whether an academic activity constitutes a “class lecture,” the university must evaluate the individual academic activity being conducted within the course, rather than evaluating the course in general. If all the classroom activities conducted within a particular course constitute “class discussion,” then those activities cannot be recorded by students without appropriate permission.

Does this statute apply to continuing education students?

The statute permitting the recording of class lectures does not differentiate between degree-earning and continuing education students. As stated in the July 13, 2021 guidance, “a state university student may, without prior notice, audio or video record a class lecture for a course *in which the student is enrolled,*” so long as the recording is for one of the three enumerated purposes.

What if I have minors in my class who may be captured on the audio or video recording?

Florida law does not prohibit video or audio recording of persons, including minors, if the recording takes place in an area where the minor would not have a reasonable expectation of privacy. As a result, since audio or video recording of a class lecture is now permitted under Florida law, the presence of a minor in the classroom would not affect a student's right to record the class lecture, so long as the recording is made for one of the three permitted purposes under the statute.

Does the new legislation allow a professor to record their class lectures?

HB 233 addresses the conditions under which a student may record class lectures but does not speak to the requirements for recording by faculty. Faculty should consult their department chairs and the Office of Information Technology when considering whether to record class lectures and should keep in mind that such recordings may constitute education records under FERPA, which requires records to be stored and maintained in accordance with state and federal law.