

**GUIDANCE REGARDING NEW FLORIDA LEGISLATION RELATING TO
HB233 WHICH HAS BECOME FLORIDA STATUTES SECTION 1004.097(3)(g)**

This guidance provides 1) the statutory changes, 2) definitions of key phrases, 3) overview of the new statutory changes, and 4) frequently asked questions and answers to help the faculty adhere to these new statutory requirements regarding HB233/Florida Statutes Section 1004.097(3)(g). Questions should be directed to generalcounsel@fiu.edu.

1. Statutory Changes

Florida Statute Section 1004.097 was amended in the 2021 legislature by HB233. The language of the statutory change, in pertinent part, is:

“(3)(g) Notwithstanding s. 934.03 and subject to the protections provided in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s. 1232g and ss. 1002.22 and 1002.225, a student may record video or audio of class lectures for their own personal educational use, in connection with a complaint to the public institution of higher education where the recording was made, or as evidence in, or in preparation for, a criminal or civil proceeding. A recorded lecture may not be published without the consent of the lecturer.

(4) CAUSE OF ACTION. —A person injured by a violation of this section may bring an action:

(a) Against a public institution of higher education based on the violation of the individual's expressive rights in a court of competent jurisdiction to obtain declaratory and injunctive relief and may be entitled to damages plus court costs and reasonable attorney fees, which may only be paid from nonstate funds.

(b) Against a person who has published video or audio recorded in a classroom in violation of paragraph (3)(g) in a court of competent jurisdiction to obtain declaratory and injunctive relief and may be entitled to damages plus court costs and reasonable attorney fees, with the total recovery not to exceed \$200,000.”

2. Key Definitions

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 including the incidental related questions and answers.

1) The following list, while not exhaustive, illustrates what is not considered a class lecture:

- a. lab sessions,
- b. a recording that personally identifies a student who has not consented to being recorded,
- c. student presentations (whether individually or part of a group),
- d. class discussion (except when incidental to and incorporated within a class lecture),

- e. clinical presentations such as patient history,
 - f. academic exercises involving student participation, test or examination administrations,
 - g. field trips, and
 - h. private conversations between students in the class and/or between/among a student, the faculty member, and/or invited guest speakers.
- b) Publish is defined 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, or any mode of print.

3. Overview of the New Law

Students may, without prior notice to the faculty member or a guest lecturer, record video or audio of a class lecture for a class 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 where the recording is made; or
- c) as evidence in, or in preparation for, a criminal or civil proceeding.

A class lecture recording may not be published without the prior written consent of the faculty member or guest lecturer except that it may be shared with university officials or state and federal government officials in connection with a complaint to or against the university or used as evidence in a criminal or civil proceeding.

Recordings may not be used as a substitute for class participation and class attendance. Failure to adhere to these requirements may constitute a violation of the Florida International University Student Conduct and Honor Code FIU Regulation 2501 <http://regulations.fiu.edu/> and/or to a legal action by a person injured by the publication.

4. FAQs

a) What can students record?

Students may audio or video record a class lecture (see definition above).

b) 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.

c) Is there anything that students are not allowed to record?

Students are prohibited from recording class activities other than lectures, including but not limited to lab sessions, student presentations (whether individually or as part of a group), a recording that personally identifies a student who has not consented to being recorded, class discussion (except when incidental to and incorporated within a class lecture), clinical

presentations such as patient history, academic exercises involving student participation, test or examination administrations, field trips, private conversations between students in the class or between a student and the faculty member, and invited guest speakers during a class session.

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

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 not subject to recording.

e) 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 prior written consent of the faculty member or guest lecturer.

f) Are there any restrictions to the use of the recordings?

Yes, recordings made may not be used to engage in academic dishonesty or as a substitute for participation in class.

The recordings may not be published or shared in any way without the faculty member's or guest lecturer's prior written consent unless the student is sharing the recording with university officials or state and federal government officials in connection with a complaint to or against the university, or as evidence in a criminal or civil proceeding.

g) 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 Conduct and honor Code.

h) Are there any other reasons a student may record?

Recording a class lecture or other class activities may be a part of an accommodation granted by Disability Resource Center (DRC). If that is the case, the student is responsible for providing the faculty member with communication from the DRC about this accommodation.

i) If I have a guest lecturer who is giving a class lecture, should I advise them about the new law?

Yes, the faculty member should provide them with a copy of this guidance to the guest lecturer so that they know what the student can and cannot do as it relates to recording the class lecture.