

House Bill 233 - Intellectual Freedom, Shielding, Recording of Lectures, Student discipline

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 College community:

Intellectual Freedom and Viewpoint Diversity Assessment

The Board of Governors has been directed to create a survey for the State University System 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 State University System community, including students, faculty, and staff, feel free to express their beliefs and viewpoints on campus and in the classroom.

Shielding

The new legislation prohibits the College 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 College’s current commitment to the First Amendment. 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.

The College 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that faculty have an expressive right in faculty research, lectures, writings, and commentary, whether published or unpublished.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 College 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 College; 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 College is in the process of 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.

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.”

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"?

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Does "class lecture" 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 College in connection with a complaint to the College, or as evidence during civil or criminal legal proceeding. If you wish to make a complaint to the College relating to a recording, please first contact the Vice President for Student Affairs, 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 uploading 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.

Codes of conduct; Disciplinary measures

House Bill 233 requires Codes of conduct to provide certain minimum due process protections to students and student organization and Codes shall be published online. These certain minimum due process protections incorporate:

- Providing timely written notice of an alleged violation, including "sufficient detail" and "sufficient time" to prepare for any disciplinary proceeding;
 - Must include allegations, citation to specific provision of Code, process to be used, and date/time/location of disciplinary proceeding
 - Notice should be provided at least 7 business days before the disciplinary proceeding
- List of all known witness(es) that have provided, or will provide, information and all known information related to allegation must be provided at least 5 business days before disciplinary proceeding;
- Students have a right to a presumption that no violation occurred, Institutions have the burden to prove, by a preponderance of the evidence, that a violation has taken place;
- Students have a right to an impartial hearing officer;
- Students have a right against self-incrimination and to remain silent, silence may not be used against a student or student organization;
- Students have a right to present relevant information and question witness(es);
- Students have a right to an advisor or advocate who may not serve in any other role (investigator, hearing officer, decision-maker, etc.);
- Students have a right to have an advisor or legal representative, at their own expense, present at any proceeding - whether formal or informal;
- Students have a right to appeal the final decision of the hearing officer or any panel directly to a senior administrator designated by the Code; and
- Students have a right to an accurate and complete record of their disciplinary proceeding(s)

The Student Code of Conduct is in the process of being updated to align with this law. This process is expected to be completed by the end of 2021. In the meantime, the requirements of the law will be followed until a formal update is made. Please contact the Office of Student Affairs regarding additional information about the procedural changes.