

FERPA AND RECORDING IN A CLASSROOM SETTING

Since the announcement to the University community of the practice of the recording of various meetings and the laws related to such practice, we have received quite a few questions regarding the recordings that occur with students primarily, but not exclusively, in the classroom. This document is an effort to address the issue of student privacy as it unfolds in an online and virtual environment. If you, as a faculty member, are recording your class, you should inform your class, before it starts, that the class will be recorded. Students should be encouraged to let the faculty member know if they have any concerns about the class being recorded.

The Family Educational Rights and Privacy Acts (FERPA) is the federal law (and has a corresponding state statute) that governs how a student's privacy in a classroom setting is protected. Most particularly, delivering instruction in the wake of COVID-19 presents new challenges and questions not previously considered. Though FERPA does not directly speak to recordings in the classroom, a student's privacy in the classroom, just as paper records, may be an education record, and must be protected. Therefore, whether a class is recorded via Zoom, Canvas, or through the use of other technology, and the student's identity can be determined, such recording is considered an education record and is protected under FERPA.

If student participation occurs during a recording (asking a question, making a comment, giving a presentation, etc.) and the identity of the student can be determined, such recording is considered to be directly related to that specific student.¹ Further, if that recording is maintained by the University, that portion of the recording is considered the student's education record and can only be used consistent with FERPA or by written consent of the student.² (A consent form is included with this document should one be needed. Also visit Records and Registration's forms webpage for a copy of the *Authorization to Release Information to a Third-Party Form* (<https://www.fgcu.edu/recordsandregistration/forms>.) FERPA allows other students **in the same class** to have access to the class recording. (An example of this is an occasion when a student is unable to attend class due to being in quarantine.) That recording should not be otherwise made public.

¹ Faculty members must make every effort not to show the image or identity of students who are asking questions, which includes refraining from referring to students by name. Contact should be made with Information Technology Services (ITS) for technical assistance.

² De-identifying the students removes the need for a specific consent from each student in the recording.

FREQUENTLY ASKED QUESTIONS

- Q1. After class, one of my students said they didn't want to be recorded in class. What should I say?
- A1. For future class sessions, you should offer the student the option of turning off their camera, muting their mic, and utilizing the chat feature and direct the chat to the Professor and not to everyone.
- Q2. Do I have to get each student's written consent prior to recording a class or conference?
- A2. It depends. If the recording only includes the faculty member speaking, that recording is not part of a student's educational record and the student's consent is not necessary. Also, using the chat feature with the camera off where the student only interacts with the faculty member or the interaction does not include any personal identifiable information, such recorded participation would not require the student's consent. De-identifying the students removes the need for a specific consent from each student in the recording.
- Q3. I've been working from home since the Pandemic and I need information about my students on hand. Can I take/access my students' personal identifiable information (PII) at my home?
- A3. Yes, FERPA does not prohibit faculty members from taking/accessing PII from a student's education records provided you have a legitimate interest in those education records. However, in order to access a student's education records, particularly at home, you must comply with FGCU Policy 3.042, Restricted Data. Further, you must use reasonable and appropriate methods to protect the student's education record from disclosure. To get further information regarding the handling or transmission of restricted data, contact Information Technology Services.
- Q4. While working from home I, on occasion, need to have a conference (e.g. by phone, Zoom, etc.) with a student to discuss an assignment or other class-related issue. My spouse/child(ren) is/are in the same room. Can I conduct the student conference under those circumstances?
- A4. As long as you do not disclose a student's PII in the hearing of your family member, such a conversation may occur in that member's presence. Also, you can move away from the family member so that your conversation cannot be overheard. Reviewing/discussing subject matter instructions generally do not involve a student's PII.

Q5. If there are minors in the classroom, must I obtain parental consent to record the class?

A5. It depends. Generally, if a student is over 18 **or** enrolled in a postsecondary institution, such as FGCU, a parent's consent is not required. Additionally, recordings of a virtual classroom may qualify as an education record and are protected under FERPA **only** if it directly relates to a student **and** if it is maintained by the educational institution or by a person acting in the institution's behalf.

(Information in this document came from excerpts of other university materials, law firms, and the Department of Education.)



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Video Tape Recording and Photograph Authorization, Release, and Indemnification

Subject: _____

I hereby consent and grant Florida Gulf Coast University (FGCU) and its legal representatives permission to use video tape recordings and/or photographs of me in connection with the subject/production which has been deemed for educational purposes, in any manner or form for any lawful purpose at any time. I also grant FGCU permission to use, at no charge, video tape recordings and/or photographs. I also waive any right that I may have to inspect or approve the finished product or the written copy that may be used in conjunction therewith, or the use to which it may be applied.

I release and discharge FGCU from any liability to me by virtue of alteration that may occur in the making or editing of said video tape recording and/or photographs.

I agree to indemnify and hold harmless FGCU, the State of Florida, and the FGCU Board of Trustees, arising from any events that may occur or circumstances that arise in the making of said video tape recordings and/or photographs.

I, the undersigned, am at least 18 years of age or I am the parent or guardian of a participant who is less than 18 years of age. I have read this Video Tape Recording and Photograph Authorization, Release and Indemnification and understand all its terms.

Signature of Participant (Parent if minor)

Print Name

Date