

**The rights of students to record the class**  
Academic Freedom Committee

*Preamble*

The issue of students recording classes came before the Academic Freedom Committee when a professor objected to their student recording a class because of the sensitive nature of some students' contributions. The student who wanted to record the class wanted to do so because of an accessibility issue. The rule and the law are clear that if a student needs a recording of a class because of an accessibility issue, they must be allowed to record the class. Nevertheless, the faculty member had a valid concern about the other students revealing sensitive information which would then be recorded.

Therefore, the Academic Freedom Committee recommends that **when a student needs a classroom recorded for accessibility issues, that the Office of Accessibility assign the student a recorder, just as they would assign a student a note-taker, who is responsible for recording only the relevant parts of the lecture/discussion and ensures that no students are recorded.**

The Academic Freedom Committee subsequently looked into wider issues (apart from accessibility) when students wish to record a class. The following is a brief overview of the relevant perspectives.

*American Association of University Professors (AAUP)*

- 1) The AAUP recognizes that students have the right to record the class and distribute that recording for non-commercial reasons.
- 2) The AAUP is most concerned about students distributing the recording to "political players" who then harass the faculty member.
- 3) Copyright is not applicable to "extemporaneous utterances" in the classroom but is applicable to a formal lecture, syllabi, power-point presentations, etc.

**AAUP Recommendation: Faculty should be central in the institutions' policies regarding electronic communication.**

*BMCC Legal Affairs Office*

BMCC's Attorney is looking into this issue. Her initial response (which may change later) is:

- 1) **Faculty can legally limit taping in classrooms and that the wire-tapping law (which allows anyone to tape a conversation secretly) does not apply to classes.**
- 2) However, classrooms are considered public spaces.
- 3) The Henderson Rules, which state that academic freedom must be guarded and that the academic space must be protected for students and professors to be able to express their views without external pressures or interference, may be relevant. Thus, it may be that recording in the classroom could be considered a type of interference that would stifle intellectual discourse and academic freedom.

#### *Other Universities*

- 1) Colgate University found the Family Educational Rights and Privacy Act (FERPA) relevant. It states that any live or recorded classroom activity that depicts students or that allows for the identification of a student is protected under the the federal student privacy law. In such situations, individuals who are not University officials and are not registered for a specific class may not view class recordings or live sessions. If a recording includes only the instructor, it is not a student record and FERPA does not limit its use.
- 2) University of California Santa Cruz deemed that students may record the class and share the recording with other students who are enrolled in that class. UCSC also states that faculty may include language in their syllabi regarding expectations that students not share classroom recordings with anyone not enrolled in the course.

#### *In the higher education discussion*

Concern for the privacy of students is a significant theme where various professors institute a complete ban of electronic recordings in their classrooms.

**“What Happens in the Classroom No Longer Stays in the Classroom,” Becky Supiano, *The Chronicle of Higher Education*, July 19, 2018.**

The article features a professor, L.D. Burnett, who updates her classroom electronics policy regularly. She forbids photography, audio or video recordings, or live streaming of any sort. She says that the policy is “not about protecting her from students. It’s about protecting students’ classroom experience from the dark side of the internet.” Also, for some students protection of privacy is crucial: They might be in an abusive relationship or has a protective order in place.

**“Why I Won’t Let My Classes Be Recorded,” John Villasenor, *The Chronicle of Higher Education*, January 10, 2020.**

An interactive classroom should be outside of digital surveillance. The exchange of ideas should not be recorded and kept on the school server. Although the classroom is public, there are nuanced levels of privacy. The classroom is not as private as your living room, but not as public as a televised debate. Recording could push students to be more circumspect in what they are willing to discuss, eroding trust. Once the recordings are made, they possibly last for a long time, available years or decades into the future, and can be used to discredit individuals who spoke the words many years in the past.

**“Academic Ethics: Privacy in the Classroom,” by Philip A. Pecorino. QCC, CUNY, Fall 2006. (full cite?)**

The purpose of the article was to argue for no automatic recordings in classrooms. However there is a section on the classroom as private space. The author defines three kinds of privacy: physical, social, and psychological. Inserting the camera into the setting erodes the sense of trust that creates honesty in their interactions.

#### *Various relevant legal cases*

A 2018 case in Federal Circuit Appeals Court found that even parents of an autistic student cannot record his school day because it would have no practical benefit to his education, according to the 1st Circuit, in *Pollack v. Regional School Unit 75*, case number 17-1700.

In the 2009 case *Argenyi v. Creighton Univ.*, 703 F. 3d 441 (8th Cir 2013), the federal district court rejected the university’s claims that the recordings would fundamentally alter the course and accepted the student’s evidence that the recordings were needed.

The 2007 Federal District Court case, *Plock v. Board of Education of Freeport School District*, case number 145,545F, in which the Court decided that ““A classroom in a public school is not the private property of any teacher. A classroom is a public space...” (qtd. in *The Wrightslaw Way*, October, 2019).

#### ***Bottom Line***

**The College and the individual faculty member have the right to make policy regarding students recording of the classroom.**

**The Academic Freedom Committee recommends that BMCC announce to our faculty that they have the right to determine classroom policy regarding students recording of the classroom.**