

Audio Recording Accommodation Instructor Notification

Background

Under Subpart E of Section 504 of the 1973 Rehabilitation Act and the Americans with Disabilities Act (ADA), institutions of higher education must provide auxiliary aids and services to students with documented disabilities. Institutions are prohibited from denying equal access to the institution's programs, courses and activities. For many reasons, some students are not able to take adequate handwritten or typed notes during class. Audio recorders are a legitimate auxiliary aid to supplement or substitute note taking for some students with disabilities. Thus, audio recordings are generally considered a reasonable accommodation for students whose disability documentation calls for this accommodation and have been approved for it by the Office of Accessibility Services. (OAS)

Faculty have the option and right, (e.g., intellectual property rights), to require a student who uses any such recording device to record faculty lectures/course discussions to sign an agreement setting forth the terms under which the recording may be used and the length of time the recording may be kept prior to disposal. However, permission to make recordings cannot be withheld if such recordings are reasonably necessary to accommodate a student's disability as defined by law.

Considering faculty rights and in accordance with a student's approved disability accommodation, students are required to notify their instructor(s) before using any recording devices to record class lectures, discussions, etc. Neither the resulting recordings nor any form of copies of transcripts of the recordings may be used for any other purpose than as a replacement for notes taken in class. This agreement does not cover the recording of any individual meetings or conversations outside of the classroom lectures or discussions where consent to record an individual should be obtained prior to recording.

The student presenting this letter to you has been approved to access the accommodation, "Audio Recording," of class lectures/discussions by OAS.

As this accommodation is implemented/supported at SMCM, the student is able to use any or all of the following devices to record class lectures/discussions:

- Digital Recorders
- Live Scribe Pens
- Personal laptops, tablets, or smartphones with audio recording software that does NOT offer transcription

Frequently Asked Questions

How is the intellectual property from the course protected?

Broadly, students may not share their recordings with other students. Students who record are expected to keep their files in a secure file location that cannot be accessed by others. We also advise students about the 'ownership' of the files/information as it relates to any app they are using to record.

While the OAS does its best to be aware of the apps students are using to record course content (and verify that they are limited to audio files), if you have concerns about the audio files or program a student is using, please contact OAS directly.

Do the other students in the course need to give permission to be recorded?

Sort of; as this accommodation has been interpreted, the consent is with the instructor. However, since Maryland is a 2-party consent state, there must be a verbal and/or visual notification of recording **before** it starts. An instructor should notify the class that someone is authorized to record the class as an accommodation, but they cannot reveal who that person is. **If a participant continues to participate after being notified that the activity is being recorded, their consent to recording is implied.**

My course covers sensitive material. I'm concerned about it being recorded. What do you recommend?

Because of provisions in the Americans with Disabilities Act and later decisions by the Office of Civil Rights, students cannot be fully prohibited from audio recording class. Instructors can develop signals/systems with students to indicate when the recorder should be shut off, given the sensitive nature of the discussion. However, students cannot be held 'academically responsible' for the content that's shared in the discussion while audio recording devices have been disabled—meaning that the content of the discussion that is not recorded cannot be relevant for any graded assignment.

If other students in the course are restricted from any note-taking as part of a discussion or exercise, the instructor may also signal that the audio recording is stopped. Any signals to the student with audio recording should be discreet.

If the nature of your course content/discussion requires that substantive time within the course is non-recorded, please be in touch with OAS so that we can collaborate on possible alternative supports for the student in the course.

What happens to the recordings at the end of the semester?

Students agree to delete recordings no later than two (2) weeks after the end of the semester unless there are extenuating circumstances (e.g. taking an incomplete). The student must reach out to us if they are expecting an extenuating circumstance.

Student Agreement for Audio-Recording Classes

In signing my name below, I, _____ (student's name), agree to the following conditions about audio-recording class sessions:

- I agree that recording lectures, class discussions, or activities are intended for my personal use to support class preparation and studying only.
- The audio recording device/app I am using is only capturing the audio file for the course.
- I will follow all instructor signals about stopping the recording at key points in the course.
- I will not share, send, post, publish, make public, or duplicate any recordings nor will I profit financially or allow others to benefit personally from lectures I will tape.
- I cannot request that the instructor or another student record class if I am absent from class.
- I agree to delete the recordings no later than two (2) weeks from the end of the semester unless there are extenuating circumstances.
- I understand that failure to abide by these rules may render me liable for breach of privacy and violation of copyright laws and/or subject to on-campus conduct procedures under the SMCM Student Code of Conduct.

Student Signature

Date

TYPE OF DEVICE APPROVED FOR RECORDING: _____

I, _____ (instructor's name), certify that I have been informed of the above student's intention to record class material and will abide by this agreement.

Instructor Signature

Date

Semester

Course

After the student and instructor have signed this document, the student must return a copy to the Office of Accessibility Services to be kept on file. If no copy of the agreement is on file for each class, the student's right to record class lectures as an accommodation is null and void.