

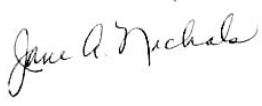
Nevada System of Higher Education
Dr. Jane A. Nichols
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MEMORANDUM

DATE: December 20, 2011
TO: Student Affairs Council
FROM: Jane A. Nichols, Vice Chancellor

RE: Covert Surveillance of Faculty Lectures

Recently the question of whether students may covertly video faculty lectures was brought to our attention. It appears that there have been cases where students have videoed faculty lectures without the faculty members express permission or knowledge and some students have gone as far as posting the videos to youtube.com, a popular web site for video clips.

The Board's policy is clear that such covert videoing is prohibited (*Title 4, Chapter 1, Section 21*):

The use of covert video surveillance for anything other than a criminal investigation on the campuses of the Nevada System of Higher Education is prohibited. If, in a criminal investigation, such video surveillance is used, it must be approved by the President or the President's designee. This policy shall not interfere with the legitimate use of video taping for academic purposes.

That policy is based on the following provision in state law that expressly deems such an act to be unlawful.

NRS 396.970 Surreptitious electronic surveillance on campus; exceptions.

- 1. Except as otherwise provided in subsection 2, it is unlawful for a person to engage in any kind of surreptitious electronic surveillance on a campus of the System without the knowledge of the person being observed.*
- 2. Subsection 1 does not apply to any electronic surveillance:*
 - (a) Authorized by a court order issued to a public officer, based upon a showing of probable cause to believe that criminal activity is occurring on the property under surveillance;*
 - (b) By a law enforcement agency pursuant to a criminal investigation;*
 - (c) Which is necessary as part of a system of security used to protect and ensure the safety of persons on the campus; or*

(d) Of a class or laboratory when authorized by the teacher of the class or laboratory.

The issue of audio-taping of lectures without the instructor's or other students' knowledge has also been raised. Under state law, NRS 200.650, it is illegal to record a private conversation unless authorized by one of the parties to the conversation. A student who surreptitiously audio-records a lecture may be in violation of this law.

Based on a review of the Board policy and state law with System legal counsel, we do not believe at this time that it is necessary to revise the Board's policy. Each institution may determine how it will enforce these provisions on a case by case basis. However, given the proliferation of cell phone, smart phones, smart pens and similar devices with video and audio capability, it is recommended that faculty be aware of these policies and appropriately notify students as to what is permissible in their respective classrooms. It is recommended that faculty include a statement on their syllabi regarding the video- or audio-recording of lectures. It may be a simple statement indicating students must seek express permission of the faculty member before recording any lecture. I am also informed that some students with disabilities may receive permission to record lectures and therefore, it would be advisable for the notice on the syllabi to indicate that in order to accommodate students with disabilities, some students may already have been granted permission to record the lectures. You may wish to confer with your institutional legal counsel for specific language that would be recommended for use at your institution.

If you have any further questions, please let me know.

CC: Academic Affairs Council