

Top 5 Library Policies (Plus a Couple More!)

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Why have Policies?

- Policies regulate behavior of both patrons and staff.
- Policies govern the use of property.
- Policies solidify common procedures.
- This session will focus on policies that apply to the public and governance of the Library. Other policies, such as employment policies, are important but will not be addressed here.

In General: Constitutional Standards

■ Nature of Activity

- The nature of the government's activity will determine the extent the activity may be regulated.
- The courts have stated that the First Amendment does not guarantee access to property simply because it is owned or controlled by the government. *United States Postal Service v City Council of Greenburg Civic Associates*, 450 US 414, 101 S Ct 2676, 69 L Ed 2d 517 (1981).

First Amendment Issues

- What does the First Amendment guarantee?
 - First Amendment right regarding what a person is viewing (keep this in mind for internet policies).

First Amendment

- However, there is also a First Amendment “right to receive” information.
 - This right includes some level of access to the public library.
 - So, each time a patron is banned or denied access, it impacts a First Amendment right.

Limited Public Forum

- A patrons says, “This is a public building. I pay for it with my taxes! You can’t tell me what to do!”
- Is that patron correct? No.

Limited Public Forum:

- || A Library is a limited public forum. A limited public forum need not be open to the public at large but may be open to a specific class of people or for the discussion of a certain subject matter.
- || *Kreimer v Bureau of Police*. The Library rules in *Kreimer* made it clear that the Library was only open for reading, studying and using Library materials: "The library has not opened its doors for the exercise of all First Amendment activities." *Id.* at 1260.

Limited Public Forum

- A Library may promulgate and enforce reasonable regulations governing the use of its facilities.
- For example, a rule that requires patrons using the facility found reasonable: “The Library need not be used as a lounge or a shelter.”
- The Library can prohibit disruptive behavior: “Prohibiting disruptive behavior is perhaps the clearest and most direct way to achieve maximum Library use.”

Limited Public Forum

- Time, place and manner regulations are permitted if narrowly tailored to serve a significant governmental interest and leave ample channels for communication.
- In *Kreimer*, there was a written policy with an appeal procedure.

Limited Public Forum

- Contrast with *Armstrong v District of Columbia Public Library*.
 - Homeless man was barred from Library.
 - Policy prohibited “objectionable” appearance.
 - Court found too vague because it was too subjective.
 - In contrast, the “nuisance” in *Kreimer* has a legal meaning.

Limited Public Forum

- Also contrast with *Brinkmeier v City of Freeport*.
 - Library employee was approached outside the Library by a man who handed her a “harassing letter.”
 - Man removed from Library.
 - In this case, unwritten rule that the Library prohibits harassing or intimidating patrons or employees.

Limited Public Forum

- *Brinkmeier*, cont'd.
 - Court found that “harassing” was vague.
 - No geographical limits.
 - No procedure to appeal the suspension.

- As a result, court did not uphold Library suspension.

Constitutional Standards

- Libraries must keep these constitutional standards in mind when developing policy.
 - Clear, specific conduct identified.
 - Restrictions should be limited to time, place, and manner.
 - Availability of appeal.

Constitutional Standards

- *Neinast v Board of Trustees of the Columbus Metropolitan Library.*
 - Dealing with patron who believes the rules do not apply to him or her.
 - Removed from the Library for failing to wear shoes – policy required shoes.
 - Patron argued going barefoot was symbolic speech entitled to First Amendment Protection, but the court disagreed.
 - The Library enacted the rule for health and safety reasons (Library reports showed blood, feces, vomit, semen and broken glass at the Library).
 - Court found the rule was reasonable. Protected the patron but also protected the Library from litigation expenses that may result from injuries to barefoot patrons.

Patron Behavior Policies

Patron Behavior Policies

- Critical policy to have when dealing with removing patrons for conduct.
- Remember to limit conduct to Library building, Library grounds, or both.
- Must clearly address specific conduct that will result in suspension of Library privileges.

Patron Behavior Policies

- Examples of specific behavior that should be addressed.
 - Violations of Law. Committing or attempting to commit an activity in violation of federal, state, or local law, ordinance or regulation (including but not limited to assault, larceny, removing Library material from the property without authorization through the approved lending procedures or vandalism) is prohibited.

Patron Behavior Policies

- Engaging in Proper Library Activities. Patrons shall be engaged in activities associated with the use of the Library while in the building or on Library property. Patrons not engaged in reading, studying, writing, participating in scheduled Library programs, or using Library materials shall be required to leave the building and shall not remain on Library property.
 - This rule was upheld by the *Kreimer* Court: “Requiring that its patrons make use of the Library in order to be permitted to remain there is a reasonable means to achieve that end.”

Patron Behavior Policies

- Restrooms. Misuse of restrooms, including laundering, shaving, hair cutting or trimming, bathing, and sexual activity is prohibited.
- Harassment. Staring, photographing, video recording, audio recording, following, stalking, harassing, arguing with, threatening, or behaving in a manner (1) which can reasonably be expected to disturb Library users or staff while such staff or patrons are in the Library or on Library property; and/or (2) that interferes with the Library patrons' use of the Library or the ability of the staff person to do his or her job is prohibited.

Patron Behavior Policies

- Interference with Staff. Patrons may not interfere with the staff's performance of duties in the Library or on Library property. This includes engaging in conversation or behavior that monopolizes or forces the attention of staff for an inappropriate period of time, inappropriate personal comments, sexual advances, or physical and/or verbal harassment.

Patron Behavior Policies

- Staff Areas. Patrons shall not be permitted in any areas designated as "staff only" or in the basement unless otherwise permitted by the Library Director.

- Equipment. Library phones and staff computers are for staff use only.
 - Must sometimes state the obvious.
 - This will address issues of patrons infringing on staff areas.

- Tables or Structures on Library Property. No person may use or set up a table, stand, sign or similar structure on Library property. This does not apply to Library-sponsored or co-sponsored events.

Patron Behavior Policies

- Loud Noise. Producing or allowing any loud, unreasonable, or disturbing noises that interfere with other patrons use of the Library or which can be reasonably expected to disturb other persons, including those from electronic, entertainment, and communication devices, such as cell phones, headphones, and radio is prohibited.

Patron Behavior Policies

- Body Odor. Offensive body odor due to poor personal hygiene, overpowering perfume, or cologne that causes a nuisance is prohibited.
- Unauthorized Use. Patrons must leave the Library promptly at closing time and may not be in the Library when it is not open to the public. Further, any patron whose privileges to use the Library have been denied may not enter the Library. Any patron whose privileges have been limited may not use the Library in any manner that conflicts with those limits placed on the patron by the Library Director, his or her designee, or the Library Board.

Patron Behavior Policies

- || Food and Beverages
- || Unauthorized use (closing time; while on suspension)
- || Alcohol; drugs
- || Smoking
- || Shirt; shoes
- || Panhandling; soliciting
- || Campaigning
- || Distribution of literature – may impact bulletin board policy
- || Sales
- || Minors – Library may have separate policy on the issue

Meeting Room Policies

Meeting Room Policies

- Same time, place, and manner restrictions apply as in patron behavior policy.
- If the Library does not want to allow all activities (i.e., private parties), then it should limit the use to the same mission of the Library: educational, cultural, civic, informational and similar uses.
- Fundamental Policy Consideration: Think about the use, not who is using the meeting rooms.

Meeting Room Policies

- Can not deny use of meeting room simply because the organization is “religious” or “political.”
 - Many non-profits have political “leanings.”
 - Recent Court cases suggest may be problems with prohibiting “religious worship service.”

Meeting Room Policies

- Example: Think of the these uses:
 - The New Day Church wants to use the meeting room for a Bible Study.
 - The “No New Taxes!” group wants to use the meeting Room for a Constitutional Law seminar.
 - The Girl Scouts want to use the meeting room for a book club.

Meeting Room Policies

|| Now how about the following....

- The New Day Church wants to use the meeting room for a private wedding reception.
- The “No New Taxes!” group wants to use the meeting room to host a fundraiser for a specific political candidate.
- The Girl Scouts want to use the meeting room to sell Girl Scout Cookies.

Meeting Room Policies

- Limits on use:
 - Can they distribute and leave material?
 - Can they bring in food?
 - What are the responsibilities for set up and clean up?
 - Is the Library going to charge fees?
- Patron Behavior Policy should apply within meeting rooms.
- Address violations and appeals.

Meeting Room Policies

- Make sure it is uniformly enforced and not used in a manner that violates Michigan law, such as the Michigan Campaign Finance Act.
- If “neutral” policies are applied only to certain groups, then there could be a violation.
- For example, the Library only enforces a rule against weekly meetings against churches holding services or meetings in the Library.

Internet Use Policies

Internet Use Policies

- || Must address the Library's compliance with PA 212 and/or CIPA (if applicable).

- || PA 212: This Act applies if a Library offers use of the internet **or** a computer, computer program, computer network, or computer system to the public.
 - Applies to the computer terminals.

 - Also applies to the wireless access.

Internet Use Policies

- If PA 212 applies, the governing body of that Library shall adopt and require enforcement of a policy that restricts access to minors by providing the use of the internet or a computer, computer program, computer network.
- There are two ways to comply.

Internet Use Policies

- || First Option: By doing both of the following:
 - By making available, to individuals of any age, one or more terminals that are restricted from receiving obscene matter or sexually explicit matter that is harmful to minors.
 - By reserving, to individuals 18 years of age or older or minors who are accompanied by their parent or guardian, one or more terminals that are not restricted from receiving any material.

Internet Use Policies

■ Second Option:

By utilizing a system or method that is designed to prevent a minor from viewing obscene matter or sexually explicit matter that is harmful to minors.

- Privacy Screens?
- Staff Monitoring?
- Adult only labs?

Internet Use Policies

- “Harmful to minors” means sexually explicit matter that meets all of the following criteria:
 - Considered as a whole, it appeals to the prurient interest of minors as determined by contemporary local community standards.
 - It is patently offensive to contemporary local community standards of adults as to what is suitable for minors.
 - Considered as a whole, it lacks serious literary, artistic, political, educational, and scientific value for minors.

Internet Use Policies

- "Local community" means the county in which the matter was disseminated.
- "Prurient interest" means a lustful interest in sexual stimulation or gratification. In determining whether sexually explicit matter appeals to the prurient interest, the matter shall be judged with reference to average 17-year-old minors. If it appears from the character of the matter that it is designed to appeal to the prurient interest of a particular group of persons, including but not limited to, homosexuals or sadomasochists, then the matter shall be judged with reference to average 17-year-old minors within the particular group for which it appears to be designed.

Internet Use Policies

II Children's Internet Protection Act (CIPA).

- II Purpose: Protection of minors by shielding minors from harmful visual material. Conditioned receipt of federal funding under Library Services and Technology Act (“LSTA”) and “E-rate” discounts on filtering computers in schools or Libraries.
 - Applies to Libraries receiving the above grants.
 - All computers must be filtered, even staff computers.
 - Different definition of “minor” than Michigan law. 17 year olds are not “minors” under CIPA.

Internet Use Policies

- To filter or not to filter? What the Supreme Court said about the legality of filtering when upholding CIPA.

Internet Use Policies

- Court analysis: Supreme Court upheld the right to require filtering.
- Why the Supreme Court’s decision did not clearly define or resolve the issue of whether filtering in all cases was permissible.
 - Plurality Decision (four Justices) Rehnquist, O’Conner, Scalia and Thomas.
 - Did not equate the decision to filter with heightened scrutiny – Library could exclude print pornography.
 - When confronted with the “overblocking” argument, the Supreme Court said such concerns were “dispelled” because of the unblocking of filters.

Internet Use Policies

- Even if unblocking is embarrassing, the “Constitution does not guarantee the right to acquire information at a public library without any risk of embarrassment”.
- Public Libraries do not have First Amendment rights that could be infringed.
- Conclusion that internet filtering does not violate First Amendment rights, does not induce Libraries to violate the Constitution, and does not impose unconstitutional restrictions.

Internet Use Policies

- Certain speech, such as child pornography and obscene speech, is not protected by the First Amendment, thus preventing access does not violate First Amendment rights. *Ginsberg v New York*, 390 U. S. 629, 88 S Ct 1274, 20 L Ed 2d 195 (1968).
- So, prevent viewing of child pornography and obscenity as part of your policy.

Internet Use Policy

- Michigan statute prevents distribution of “obscenity.”
- “Obscene” means any material that meets all of the following criteria:
 - The average individual, applying contemporary community standards, would find the material, taken as a whole, appeals to the prurient interest.
 - The reasonable person would find the material, taken as a whole, lacks serious literary, artistic, political, or scientific value.
 - The material depicts or describes sexual conduct in a patently offensive way.

Internet Use Policy

- It is illegal to possess, distribute, or manufacture images of Child Pornography, which is defined by law.
- Michigan has a similar state law, MCL 750.145c, that prohibits the sexual abuse of children, including distributing and possessing such abusive material.

Internet Use Policies

- Pornography.
- Freedom of Speech: Courts have upheld a patron's right to look at pornography is protected by the First Amendment, including right to look at pornography in Libraries.

Internet Use Policies

- Other time, place, manner restrictions:
 - Can the terminals be reserved?
 - Do the patrons have to pay for copies or printouts?
 - May more than one patron work at a terminal?
 - First come/first served?
 - What type of general behavior restrictions should be placed on the use?
 - Effectively regulate without restricting access to lawful material.
 - Need to have a violation and appeals section.

Privacy Policies

Privacy Policies

- Should address privacy of “library records” as defined under the Michigan Library Privacy Act.
- “Library record” means a document, record, or other method of storing information retained by a Library that contains information that personally identifies a Library patron, including the patron's name, address, or telephone number, or that identifies a person as having requested or obtained specific materials from a Library. Library record does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of Library materials in general.

Privacy Policies

- || Internet History.
- || Surveillance Tapes.
- || Circulation Records.
- || Other Documents.

Privacy Policies

- Treatment of Different Classes of Records:
 - FOIA Requests.
 - State and Local Enforcement Records.
 - Federal/Patriot Act.

Privacy Policies

- Must have written authorization from parent/guardian before access to minor's records.
- Person must agree to be responsible for the payment or return of the materials. This can also apply to adults. Think about your policy regarding a spouse picking up material.

Privacy Policies

- Understand that the Library has a right to a hearing before turning over library records.
- With that said, contact your attorney if faced with an immediately executable search warrant.

Media Policy

- Covers who is the spokesperson for the Library.
- Regulates taking pictures inside the Library by media.
- Be careful about Open Meetings Act issues.

FOIA Policy

- Recently amended FOIA to require a Policy, Written Summary and Detailed Itemization. Know how to respond to requests.
- Written Policy and Public Summary must be in place before fees can be charged.
- Once adopted, recommend putting Policy on the website. Library has to include Policy and Summary (or link) in every response.

Record Retention Policy

- Must use the state approved Library policy or seek a “single agency” approval.
- Must keep records for time stated in retention period.
- Know how the documents are kept and when they are destroyed.
 - Internet use records.
 - Internet sign up sheets.

Circulation Policy

- Policy should clearly identify who qualifies for service.
- Library should determine what type of documentation is required for a library card.
- Address who has access to information when a patron signs up for a card – for example, can the parents obtain information by agreeing to be responsible for the return of materials and payment of fees?

Circulation Policy

- Policy should identify each card and what services are available.
- Circulation periods.
- All fees should be included in the circulations policy.

Material Selection Policy

- The Library should have a process set up to challenge or reconsider books, programming or other materials.
- A key element to this policy is the process for reconsideration and the ability to appeal any administrative decision.

Bulletin Board/ Display Policy

- The Library should have a process set up to consider requests to use bulletin board or display space.
- Again, this policy should be content neutral. For example, if the Library allows notices for meetings of book groups, it should not deny a notice for a bible study group.

Bulletin Board/ Display Policy

- Consider the Michigan Campaign Finance Act and Michigan law. For example, the Library should not allow unattended petitions.
- Use time, place and manner restrictions.
 - How big is the display/posting?
 - How long will it be displayed or posted?
 - How many items may be posted?

List of Common Policies (Not Exhaustive)

- ADA Compliance Policy
- Bulletin Board Policy
- Bylaws
- Children in the Library Policy
- Confidentiality Policy: Disclosure of Library Records
- Copyright Policy
- E-mail Communication Policy

List of Common Policies (Not Exhaustive)

■ Finance Policies

- Automated Clearing House* (ACH) Policy
 - Credit Card Policy*(use by Library)
 - Electronic Transactions Policy* (use of credit or debit by patrons for fees, etc.)
 - Endowment Policy
 - Investment Policy**
 - Purchasing Policy
 - Petty Cash
- * Required if using ** Required

List of Common Policies (Not Exhaustive)

- Freedom of Information Act Policy** (required)
- General Operating Policies
 - Hours of Operation
 - Closing Policies
- Circulation
- Material Selection/Collection Development
- Internet Use Policy
- Media/Public Relations Policy

List of Common Policies (Not Exhaustive)

- Meeting Room Policy
- Patron Behavior Policy
- Photography Policy
- Programming Policy
- Record Retention Policy
- Social Security Privacy Policy** (Required to Keep Confidential)
- Study Room or Study Area Policy
- Volunteer Policy

Questions?

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