

LEGAL ISSUES IN GA PUBLIC LIBRARIES

CHAPTER 2: USE OF LIBRARY POLICIES TO MANAGE PROBLEM BEHAVIOR BY PATRONS

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Chapter 2

Use of Library Policies to Manage Problem Behavior by Patrons

As discussed in Chapter 1, the First Amendment of the United States Constitution establishes a right to access the public library and the information contained therein.²² Within the State of Georgia, the legislature has determined that public libraries are part of the state's public education system.²³ Therefore, members of the public have a protected interest in accessing the library and its holdings. The individual's right is not unlimited, however. Public libraries may impose reasonable policies governing patron behavior.²⁴ The purpose of such policies is to "balance the rights of the library community as a whole with the individual's rights to access and use the library."²⁵ While not addressed by courts in Georgia, courts in other jurisdictions, when weighing the Constitutional validity of library policies, have found that the public library "is obligated only to permit the public to exercise rights that are consistent with the nature of the Library and consistent with the government's intent in designating the Library as a public forum."²⁶

In order to create and enforce valid policies that govern patron conduct and use of library facilities and equipment, the following legal concepts should be kept in mind:

1. Reflection of the library's mission

A library's policies are its governing rules and should be drafted with an eye toward achieving the library's overall mission. For the most part, individual libraries have their own mission statement, and these vary from place to place depending on the size of the library, the nature of the community, etc. The library profession as a whole, in considering public libraries, ascribes to the "library faith," which is the "belief that libraries support reading and the democratic process."²⁷

Courts have described the purpose of public libraries in similar terms. In 1966, the United States Supreme Court provided its view of the purpose of public libraries, stating that a public library is a "place dedicated to quiet, to knowledge, and to beauty."²⁸ Public libraries are "dedicated to reading and learning and studying," and the United States Supreme Court noted that the maintenance of "peace and order" in public libraries was of utmost importance, so that libraries could "further the extremely necessary purposes underlying their existence."²⁹ In 1992, the United States Court of Appeals for the Third Circuit held that libraries provide a place for "reading, writing, and quiet contemplation."³⁰ In the more recent United States Supreme Court decision related to the Children's Internet Protection Act, the Court found that the public library offers resources "to facilitate research, learning, and recreational pursuits."³¹

In order for a court to uphold a library policy restraining or proscribing certain patron conduct, that policy should directly relate to the library's overall reason for being. In other words, the policy should be a means to allow the library to fulfill its mission.

2. Legitimate purpose

Policies governing patron behavior and use of library facilities often are restrictive in nature and curtail an individual's unfettered access to the library resources. In order to be upheld by a court as a valid policy, the rule should have a legitimate purpose.³² For example, a time limitation on computer use is imposed for the legitimate purpose of making library resources available to as many users as possible. On the other hand, a policy enacted by a pro-life library prohibiting the viewing of Websites related to abortion has no legitimate purpose. Rather, this policy's purpose is to restrain users' freedom of access to information from a particular point of view.

Courts assessing the validity of a particular policy will scrutinize the actual purpose underlying the rule.³³ Therefore, the drafters of a library policy regulating patron conduct and use of the library should take the time to identify the actual purpose behind the policy and be satisfied that this purpose is a legitimate aim of the library rather than a furtherance of a particular viewpoint.

3. Specificity

A policy directing patron conduct must be specific enough to put a library user on notice of what is and what is not allowed. Otherwise, the policy will be “void for vagueness.”³⁴ Many times, the library policy at issue simply prohibits illegal activity, which is a non-specific directive. However, “[t]he general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system.”³⁵ Therefore, a library policy prohibiting illegal activity would not likely be invalidated due to its lack of specificity. It would be an advisable practice, however, to notify a patron of precisely what law is being violated and allow the patron the opportunity to correct his or her behavior prior to taking disciplinary action.

4. Applied uniformly

In order for a policy that restricts or inhibits conduct of a library patron to be valid, the library must apply the policy in a uniform manner. In other words, the policy must be applicable to all patrons at all times. Failure to apply a policy in a consistent and fair manner would be tantamount to discrimination.³⁶

5. Properly communicated

Finally, in order to regulate patron conduct, the library must inform its users of its policies. This can be done by physically posting the policies within the library or electronically

on the library's Website. Library staff should be prepared to provide a printed copy of the library's policies to patrons upon request. And when a library user is approached about violating a library policy, giving this patron a copy of the written policy at issue is a good idea.

6. Due process

Because individuals have a right to access the public library, depriving someone of this right requires due process of law.³⁷ The purpose of due process is protection of the individual against arbitrary action of the government.³⁸ Due process requires the protection that a particular situation demands.³⁹ At a minimum, “[p]arties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.”⁴⁰ When a library notifies the wrongdoer of the charges against him allows him to present his side of the story, due process has been afforded.⁴¹

Below are examples of how a library can regulate certain patron behavior through policies that meet the legal criteria discussed above.

Q4: A patron is utilizing library computers (often more than one at a time) to burn DVDs. Library staff believe he is pirating commercial DVDs, but this has not been confirmed. Can he be questioned about his activities? What is the limit of the library's liability if he is conducting illegal activity?

This entire scenario can be addressed through the enforcement of library policies. Policies that limit access to one computer per person and that prohibit the use of library equipment for illegal activities further legitimate purposes of the library. Therefore, as long as these policies are unambiguous, clearly communicated, and applied uniformly to all patrons, there is no reason to fear legal challenge. Furthermore, if there is a valid basis for the suspicion

of illegal activity, library staff should feel confident in inquiring about the patron's use of the library computers and reminding the patron about copyright laws.

Pursuant to the Copyright Act of 1976, the unauthorized reproduction of copyrighted material for resale is illegal.⁴² The Copyright Act does provide an exemption for a library when its equipment is utilized to infringe upon a copyright. Section 108(f) states:

Nothing in this section shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises:

Provided,

That such equipment displays a notice that the making of a copy may be subject to the copyright law.

Thus, in order to avoid liability for contributory infringement, the library should display a copyright notice on computers in the same manner as on the library's photocopier.⁴³ Of course, the suspicion by library staff that the patron is utilizing the library's equipment to illegally reproduce commercial DVDs raises the question of whether the use can now be considered "unsupervised." Therefore, it is advisable for the library to make inquiry into the patron's use of its equipment as discussed above.

Library staff may hesitate to question the patron about his or her activities in the name of patron privacy, which is considered an essential element of library service.⁴⁴ The Code of Ethics and Bill of Rights of the American Library Association (ALA) provides, "We protect each library user's right to privacy and confidentiality with respect to information sought or received, sources consulted, borrowed, acquired, or transmitted."⁴⁵ These privacy rights, however, are not absolute and may be outweighed by the legitimate need to assure that the library and its equipment are not being used in furtherance of illegal activity. In addressing questions about

privacy policies, ALA has stated, “Clear evidence of illegal behavior is best referred to law enforcement who know the processes of investigation that protect the rights of the accused.”⁴⁶

Q5: What if a patron is scanning in porn and sending to a friend?

A library policy prohibiting the use of library equipment for illegal activity will preclude this activity. It is a violation of Federal law to use an interactive computer service, in or affecting interstate commerce, for the purpose of sale or distribution of any obscenity.⁴⁷ The Internet is a method of communication between states and, as such, has been held to affect interstate commerce. The patron’s act of sending the scanned images is a distribution. Therefore, if the images meet the definition of obscenity,⁴⁸ use of the library computer to access the Internet and send the images is an illegal activity.

Depending on the source of images the patron is scanning, it is possible that there are copyright issues as well. For example, if the patron is scanning images from a commercial magazine in violation of copyright protections, his use of the scanner to reproduce the images would also be in breach of the library’s policy prohibiting use of library equipment for illegal activity, as discussed above.

This raises the question of why the magazine, if it is in fact obscene, can be sold in the first place. The answer lies in the choice of local authorities to not enforce the Federal statute preventing the sale of obscene materials. Regardless of whether the statute prohibiting the sale and distribution of obscenity is regularly enforced, it remains valid law and can be relied upon in the enforcement of a library policy precluding illegal activity.

Q6: Can a progressive discipline policy be implemented in order to address a patron’s repeated inappropriate behavior in the library? In other words, is the library required to begin each day with a clean slate even when the same patron becomes problematic repeatedly?

The form and substance of the disciplinary policies are up to individual libraries. There is no legal requirement that the library give repeat offenders a fresh start with each day. It would be advisable to include a progressive disciplinary plan within the library's policy. This will give the library the flexibility to impose a punishment that will further its overall mission.

When the legal principals discussed above are observed, the library is free to impose punishment that it determines is reasonable and appropriate under the circumstances. Except in extreme cases such as forever banning a person from using a library "for a single instance of misconduct no matter how minor," courts generally uphold disciplinary policies related to patron conduct in public libraries.⁴⁹

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²² Kreimer, 958 F.2d at 1262.

²³ O.C.G.A. § 20-5-1.

²⁴ Kreimer, 958 F.2d at 1262.

²⁵ Torrans, 237.

²⁶ Kreimer, 958 F.2d at 1262.

²⁷ Kathleen de la Pena McCook, *Introduction to Public Librarianship* (New York: Neal-Schuman, 2004), 83.

²⁸ *Brown v. Louisiana*, 383 U.S. 131, 142 (1966).

²⁹ *Ibid.* at 159-60.

³⁰ Kreimer, 958 F.2d at 1261.

³¹ *American Library Association, Inc.*, 539 U.S. at 203.

³² Torrans, 240.

³³ *Ibid.*

³⁴ *Sewell v. Georgia*, 435 U.S. 982, 986 (1978).

³⁵ *Cheek v. United States*, 498 U.S. 192, 199 (1991).

³⁶ Torrens, 240.

³⁷ *Wayfield v. Town of Tisbury*, 925 F.Supp. 880 (D. Mass. 1996).

³⁸ *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

³⁹ *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

⁴⁰ *Goss v. Lopez*, 419 U.S. 565, 579 (1975).

⁴¹ *Neinast v. Board of Trustees of Columbus Metropolitan Library*, 346 F.3d 585, 598 (6th Cir. 2003).

⁴² 17 U.S.C § 106.

⁴³ 37 C.F.R. 201.14.

⁴⁴ Torrens, 29.

⁴⁵ American Library Association Code of Ethics, art. 3,

<http://www.ala.org/ala/aboutala/offices/oif/statementspols/codeofethics/codeethics.cfm>.

(accessed March 22, 2010).

⁴⁶ American Library Association, “Questions and Answers on Privacy and Confidentiality”

<http://www.ala.org/ala/aboutala/offices/oif/statementspols/statementsif/interpretations/questionsanswers.cfm> (accessed March 22, 2010).

⁴⁷ 18 U.S.C. § 1465.

⁴⁸ For a discussion of what material is considered obscene, see Chapter 1.

⁴⁹ *Brinkmeier v. City of Freeport*, 1993 WL 248201, *5 (N.D. Ill. July 2, 1993).