

Managing Patron Behavior without Abridging Legal Rights



Marti A. Minor, JD, MLIS

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Disclaimer



- These materials are provided as general information only.
- No legal advice is being given by the Georgia Public Library Service, the Board of Regents of the University System of Georgia, or any other person.
- You should consult with your attorney on all legal matters.

What Legal Implications Do Patron Policies Have?



- First Amendment to the US Constitution: the government is limited in how it can restrict access to a public library.
- Fourteenth Amendment to the US Constitution: Before the government can deprive a person of a liberty or property interest, the individual must be afforded due process.

First Amendment Rights



“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble; and to petition the Government for a redress of grievances.”

Evolution of “Library First Amendment Rights”



- The government cannot infringe on an individual’s right to receive information: USSC 1943.
- The government cannot infringe on an individual’s freedom to read or freedom of inquiry: USSC 1965.
- A public library is the “quintessential locus of the receipt of information”: 3rd Circuit 1992



Place Matters: Type of Forum?



- An individual's 1st Am rights are not absolute.
- Place matters: protection afforded depends on location where the rights are sought to be exercised.
 1. Traditional Public Forum: governmental property regularly used for the exercise of 1st Am rights.
 2. **Designated Public Forum: governmental property designated for the exercise of specific types expressive activity.**
 3. Private Forum: governmental property not for use in the exercise of 1st Am rights.

Public Library: Designated Public Forum



A public library is obligated to permit the public to exercise only rights that are consistent with the nature of the library and with the government's intent in creating the library.

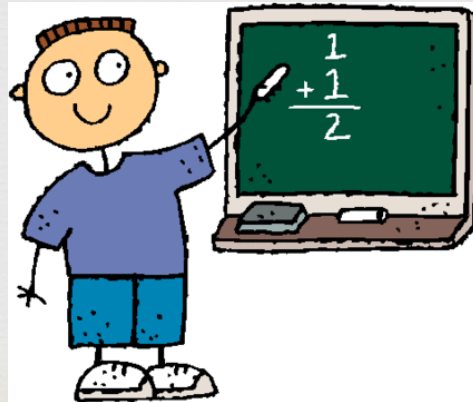
- USSC 1966 a public library is “a place dedicated to quiet, to knowledge, and to beauty.”
- 3rd Cir. 1992 : “a public library’s purpose is to aid in the acquisition of knowledge through reading, writing, and quiet contemplation.”
- USSC 2003: “Public Libraries pursue the worthy missions of facilitating learning and cultural enrichment.”
- In GA – a part of the provisions for public education.
OCGA § 20-5-1.

Rules that Do Not Directly Affect Library First Am. Rights



Reasonableness Test

1. Reasonable, and
2. Not an effort to suppress expression merely because public officials oppose the speaker's view.



Rules that Directly Affect Library 1st Am Rights



Heightened Scrutiny

1. Achieve a significant governmental interest;
2. Narrowly tailored; and
3. Viewpoint neutral.



Policies About Conduct

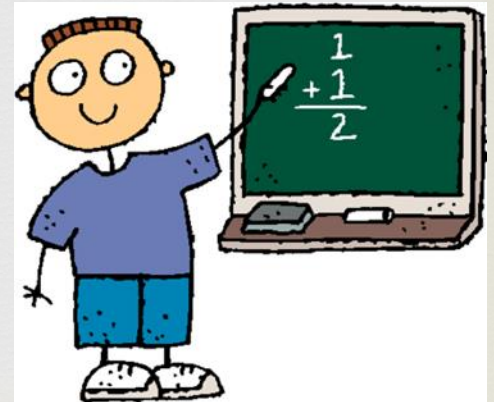


Usually about preventing MISUSE of the library so not a direct impact on Library First Amendment Rights.

Bathing, Shaving, Laundry



- No court cases
- Library First Amendment Rights not affected.
- Consider reasonableness & viewpoint neutrality.



Sleeping



- A city ordinance prohibiting sleeping in public buildings, including libraries, was found unconstitutional. *Pottinger v. City of Miami*, 810 F.Supp. 1551 (S.D. Fla. 1992).
- Note that this was a criminal law, not a library policy. It did not involve First Amendment rights of any kind.
- A library policy prohibiting sleeping – for the purpose of maintaining a quiet environment for all patrons to exercise their Library First Amendment Rights – would likely pass the reasonableness test.

Breastfeeding



Under Georgia law, a mother has a right to breastfeed her baby in any location. O.C.G.A. § 31-1-9.

- Library staff may request mother to use a designated area, but may not require it.
- What about diaper changing? No affirmative right. Seems reasonable and viewpoint neutral to require diaper changing take place in the restrooms.

Policies About Hygiene & Appearance



Could result in denial of access to a person
seeking to do nothing more than exercise
Library First Amendment Rights

Hygiene



- NJ library policy: “Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.”
- 3rd Circuit found this rule to be viewpoint neutral and narrowly tailored to achieve the significant governmental interests of ensuring that one patron does not interfere with other patrons’ use of the library and maintaining facilities in a sanitary and attractive condition.

- Note use of the word “nuisance.” Legal term meaning condition causing material annoyance, inconvenience, or discomfort to the general public.
- Gives the policy an objective standard.
- A library policy prohibiting “objectionable appearance or odor” was found unconstitutional b/c it was vague. *Armstrong v. District of Columbia Public Library*, 154 F.Supp. 2d 67 (D. D.C. 2001).

Dress Codes



- Library policy requiring shoes was viewpoint neutral and narrowly tailored to achieve the significant governmental interest in maintaining public health and safety and the library's economic well-being by preventing tort claims brought by library patrons who were injured because they were barefoot.
Neinast v. Columbus Metro. Lib., 346 F.3d 585.

Refresher on Dress Code for Employees

- A public employee has First Amendment right to speaking out about matters of public concern, which includes: politics, religion, and criticism of employer's practices.
- These rights can be curtailed if the employer's interest in maintaining an efficient workplace outweighs the individual employee's interest in free expression.

Due Process



14th Amendment, requires notice & right to be heard.

Insufficient Due Process



- Library patron permanently banned from using any library computer to access the internet.
 - Librarian witnessed a pop-up containing nudity on the screen.
 - Ban was imposed immediately after the single incident was witnessed.
 - Patron was given no avenue to appeal or to even explain how the image appeared on the screen. *Miller v. Northwest Region Library Board*, 348 F.Supp.2d 563 (M.D. N.C. 2004).

Sufficient Due Process



- Patron sought to enter library with shopping cart of foul smelling items in violation of policy.
 - Head of library security met with patron to explain the rule and informed him that he was welcome to come into the library without the malodorous items.
 - The security chief listened to the patron's explanation of why he could not abandon his possessions.
 - Alternatively, suggested that he transfer the possessions to a more enclosed container such as a suitcase, which he could bring into the library.

Policies Disproportionally Affecting Homeless or Mentally Ill Patrons



Legal Implications or Ethical Considerations?

- Bathing, shaving, changing clothes in the restroom;
- Sleeping;
- Bringing in bags, carts, blankets, bedrolls;
- Panhandling;
- Requirements for ID or permanent residence for borrowing privileges or computer use.

Resources for Librarians: Serving Homeless Patrons



- ALA
 - Hunger, Homelessness & Poverty Task Force
 - Office for Literacy and Outreach Services.
Subcommittee on Library Services to the Poor & Homeless
- In Georgia
 - Georgia Law Center for the Homeless
 - Help for the Homeless in Georgia:
<https://georgia.gov/blog/2016-08-04/help-homeless-georgia>

Resources for Mental Health Training



- Berk, Josh. “Mental Health Training in Public Libraries.” *Public Libraries*, November/December 2014.
- ALA. “Mental Health First Aid USA for Library Staff,” <http://www.ala.org/programming/mental-health-first-aid-usa-library-staff> (webinar) 2012.
- National Alliance on Mental Illness: nami.org
- Mental Health America in Georgia:
<http://www.mhageorgia.org/>

Final Word: Checklist for Patron Policies



- First Amendment rights
- Due Process rights
- Equitable use of library facilities and resources
- Safety of public & staff
- Protection of materials, equipment, facilities
- Consistent enforcement