

# Library Law

A Handbook for Public Librarians  
in Georgia

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Georgia Public Library Service – Atlanta, GA

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### A. Hiring

#### § 1.01 Job Description

A good hiring decision begins with a well-tailored job description. This written summary is the key to attracting appropriate job candidates. Typically, an effective job description will contain the following components:

- **Summary statement.** Include the job title and concisely describe the job duties and identify to whom the employee will report.
- **Functions of the position.** This lengthier section details what the job actually entails and should be quite specific. It will describe any supervisory functions in addition to being as detailed as possible describing tasks the employee will face every day. This section will indicate whether the person will deal with customers, the public, or only internal employees.
- **Attributes desired for the position.** This section will state what specific equipment or software the employee must be able to use. It should also specify any technical or educational requirements that may be desired as well as any experience prerequisites. This section can be used to provide insight into the type of work environment that exists or is desirable.
- **Reporting.** The reporting component of the job description will provide details on the hierarchy of the organization in order to demonstrate how this employee's activities fit into the total enterprise.
- **Evaluation criteria.** This section sets out the specific expectations the employer has for the successful job candidate. The drafter of the job description should include evaluation criteria made up of the type of activities that will enhance the success of the organization.
- **Compensation.** Including a range instead of a specific figure will give you more flexibility, but often applicants will feel they should be at the top of the range. It is usually better to have a specific dollar amount, especially if you are giving the job description to the employee. If your organization has salary grades, use that.
- **Physical location and surroundings.** Describe the environment where the employee will perform the job functions.

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In addition to these basic components, there are legal considerations in drafting job descriptions. If an employer's decision-making is challenged by a disgruntled employee or a turned-away job applicant, the best evidence of what the essential functions of a job and the desired attributes of the employee selected for the position is the job description. Specificity is needed to accurately describe the position and the ideal candidate. However, the characteristics sought should relate directly to the job and the skills, education, training, and experience needed to perform it. The job description should never include protected characteristics such as race, age, sex, national origin, and religion.

Even when the library is not hiring, job descriptions should be routinely reviewed to ensure that each job description reflects what the employee in the position actually does. To the extent that an employee's duties change over time, the job description should be updated accordingly.

### **§ 1.02 Application & Interview Questions**

The purpose of the application and interview process is to obtain information from job candidates in order to allow the employer to select the applicant who is the best fit for the organization. An employer should not, however, ask questions designed to elicit information that cannot be legally used in hiring decisions. For example, it is illegal to base a hiring choice on a candidate's race. Therefore, there should be no requirement for a candidate to identify his or her race on the application or through questions posed during an interview. There is no prohibition on what a job candidate reveals voluntarily. Thus, an employer should not shy away from questions or discussions that lead to revelations by the candidate related to protected characteristics. What is important is that the employer neither solicits the

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information nor makes the hiring decision based on the information. Below are examples of questions to avoid and suggestions of neutral questions aimed at obtaining information that is valid for an employer to have and rely upon.

An employer cannot ask for an applicant's maiden name or spouse's maiden name. However, asking whether the candidate has received educational degrees or worked under another name is permissible because the employer has a legitimate interest in confirming a candidate's credentials and work history.

Questions about an applicant's marital status or whether he or she has or plans to have children are not allowed. Likewise, questions about a job candidate's child care arrangements are not permissible. After hiring an individual, however, questions about family members and dependents may be necessary for employer-sponsored insurance enrollment.

The only permissible question of a job applicant related to age is whether a person has attained the minimum age required to perform the job. For instance, in Georgia, there are limitations on the number of hours a minor under the age of sixteen is allowed to work. Therefore, an employer seeking a full-time worker may inquire that an applicant is sixteen or older in order to ensure that the applicant is of a legal age to do the job. An employer may ask an individual's age after hiring for a legitimate purpose such as enrollment in employer-sponsored health insurance.

An employer may not inquire about an applicant's citizenship beyond whether the individual may legally work in the United States. Importantly, as a governmental entity, a public library has the obligation to verify employment eligibility of all newly hired employees through participation in a federal work authorization program. O.C.G.A. § 13-10-91(a). *See* Legal Eligibility: Immigration

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Compliance at § 1.04. Questions about an applicant's nationality, ancestry, and native language are impermissible. And, inquiring about the ability to speak a foreign language is permitted only when that ability is a job requirement or a bona fide occupational qualification.

Asking a job candidate about membership in social or political organizations is improper. On the other hand, membership in professional or trade organizations directly related to the job is a legitimate inquiry for the employer.

Questions about religious affiliation or what religious holidays a job applicant observes are inappropriate. However, after hiring an individual, inquiring about his or her availability to work on religious holidays is a legitimate inquiry for scheduling purposes.

There are no questions about a candidate's race that can be asked by the potential employer. Also prohibited are indirect methods to identify an applicant's race such as requiring submission of a photograph with an application or application questions about hair, eye, and skin color.

An employer is prohibited from asking a job candidate about his or her sex or sexual preference.

Asking a job applicant if he or she has a disability is prohibited. Questions about any need for accommodations are permissible, however—so long as the need for an accommodation is not the basis for refusing to hire.

The criminal history of a job applicant is increasingly becoming off limits for employers. In Georgia, private employers are not prohibited from inquiring into arrests or convictions. However, in February 2015, Georgia Governor Nathan Deal signed an executive order prohibiting use of criminal history as an automatic

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disqualification for jobs with governmental entities in Georgia. Additionally, if a public employer does utilize background checks, applicants must be afforded the opportunity to explain or refute the results as well as demonstrate rehabilitation efforts. *See Background Checks at § 1.03.*

An applicant's military service is relevant only if the experience in military service relates to the job; thus an employer's questions should be appropriately limited. Employers may not ask a candidate why he or she was discharged from the military or to see discharge papers unless there is a bona fide occupational qualification related to the job (i.e., state job veteran preference or security clearance). A veteran's reason for military discharge is protected by the Uniformed Services Employment and Reemployment Rights Act. 38 U.S.C. §§ 4301–4335. However, employers are free to ask the veteran candidate questions about the dates of military service, duties performed, rank during service and at time of discharge, pay during service and at time of discharge, training received, and work experience. The requirements of military reserve duty are not subject to question by a potential employer.

Questions about a job candidate's physical attributes are permissible only to the extent that the physical inquiries relate directly to the ability to perform the job. Also, an employer may require an applicant to take a physical agility test, but only if the test pertains to specific job functions and only if all others in the same job classification are required to take the test. An employer cannot require an applicant to submit to a physical exam.

An employer may require applicants to submit to a test for illegal drugs; however, an alcohol test is considered a medical examination and may not be



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administered until an offer of employment is made. In the event an employer opts to test for particular substances it must do so on a consistent basis. The tests should be administered to all individuals in the applicant pool as to illegal drugs and to all new hires in the case of alcohol testing.

The Employee Polygraph Protection Act of 1988 prohibits private employers from administering polygraphs to current and prospective employees. 29 U.S.C. § 2002. But governmental employers such as public libraries are not covered by this law.

Questions about prior job experience are permissible. An employer may ask an applicant to identify former employers and to provide salary information from past jobs. Also, applicants may be asked about reasons for leaving former jobs and to explain gaps in work history.

Inquiring about an applicant's education history is permissible so long as the education is related to the job sought. However, employers should avoid requiring a candidate to provide dates of graduation.

An employer is free to ask job applicants to provide references.

### **§ 1.03 Background Checks**

Georgia law imposes upon employers "a duty to exercise ordinary care not to hire or retain an employee the employer knew or should have known posed a risk of harm to others." *Drury v. Harris Ventures, Inc.*, 302 Ga. App. 545, 548, 691 S.E.2d 356, 359 (2010). Therefore, hiring libraries must make some level of investigative effort to screen job applicants. Doing so raises a number of legal questions.

While many applicants may not be concerned about background investigations, others are uncomfortable with the idea of an investigator poking

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around in their personal history. Legally speaking, an employer may investigate a potential employee up to the point that the investigation becomes an invasion of privacy. The Restatement (Second) of Torts provides the following standard definition of intrusion upon seclusion: “One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”

Additionally, there are federal and state laws that prohibit the use of certain information garnered through a background check. Anti-discrimination laws prohibit employers from making hiring decisions based on factors ranging from an applicant’s religion to his or her genetic information.

A basic background check that should be conducted for any job candidate is to confirm past work experience. Looking into an applicant’s work history gives insight into the candidate’s job stability and loyalty to an employer as well as the ability to perform in the workplace. The potential employer should obtain consent from the applicant before contacting past employers; refusal to grant consent by the job candidate is a definite red flag.

There are much more in-depth types of background checks a potential employer may consider. There are pros and cons to such investigations.

### **[a] Criminal Records: Arrest & Conviction**

In Georgia, official criminal history information is kept and distributed by the Georgia Crime Information Center (GCIC), a division of the Georgia Bureau of Investigation. A potential employer may request criminal history records by submitting the fingerprints of the person whose records are requested or a signed

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consent form with the person's full name, address, Social Security number, and date of birth. In most cases, the GCIC will not release records of arrests or charges that did not result in a conviction, sentences for certain first offender crimes, for crimes where the individual was later exonerated or the charges were discharged without court adjudication of guilt. O.C.G.A. §§ 35-3-34, 35-3-34.1. Note that if an employment decision is made adverse to a person whose record was obtained from the GCIC, the employer is required to inform the applicant of the information obtained from GCIC and the effect the information had on the employment decision. O.C.G.A. § 35-3-34(b).

The United States Equal Employment Opportunity Commission (EEOC) has said that use of criminal history may sometimes violate Title VII of the Civil Rights Act of 1964. This can happen, the EEOC says, when employers treat criminal history differently for different applicants or employees.

In 2012, the EEOC issued extensive guidelines for employers in considering the criminal history of a job applicant or employee. The EEOC cited the most important considerations as: (1) the nature and gravity of the offense, (2) the time that has lapsed since the offense, and (3) the nature of the job. In July 2012, nine state Attorneys General (including Georgia's) sent a letter to the EEOC criticizing the EEOC's application of the disparate impact in the use of criminal screens. In response, the EEOC reiterated its position that if an employer utilizes criminal background checks, there must be some level of individual assessment rather than a blanket screening.

While the EEOC's position on criminal background checks has not been addressed by courts in Georgia, the United States Court of Appeals for the Fourth

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Circuit affirmed a district court in Maryland ruling in favor of an employer who utilized criminal background checks in making hiring decisions. *Equal Emp. Opportunity Comm'n v. Freeman*, 778 F.3d 463 (4th Cir. 2015).

In addition to the EEOC's position discouraging blanket criminal background checks, as a public employer, Georgia public libraries are subject to Governor Nathan Deal's Executive Order entered in 2015. The executive order requires government entities to implement hiring policies to:

- prohibit use of a criminal record as automatic disqualification;
- prevent use of an application form that inappropriately excludes qualified applicants;
- promote accurate use and interpretation of criminal histories; and
- provide qualified applicants an opportunity to discuss and refute contents of criminal record or to demonstrate rehabilitation.

Whether a public library utilizes criminal background checks during the hiring process is a policy decision to be made by the library board in conjunction with the system director. Should the library opt to use criminal background checks, the following questions should be resolved prior to beginning the hiring process and use of background checks should be consistent across job categories:

- At what point in the application process will the background check be conducted?
- What form of consent will the library obtain from applicants?
- What job categories will be subject to background checks?
- Will volunteers be subject to background checks?
- How will decision makers discuss results with the applicants?

### **[b] Credit Checks**

The Fair Credit Reporting Act (FCRA) requires employers to obtain consent to view a job applicant's credit history. 15 U.S.C. §§ 1681-1681t. Additionally, the FCRA requires employers to provide applicants with a copy of their credit information used in the hiring decision, as well as an explanation of the applicant's

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rights. In 2015, a bill was introduced in the United States Senate to amend the FCRA to prohibit credit checks by employers. The bill died in committee. On the state level, a bill to enact the Fair Chance at Employment Act was introduced in the 2017 legislative session of Georgia's General Assembly, but was not passed. In light of these recurring efforts to curtail the ability to perform credit checks on job applicants, employers should ascertain the current state of the law before undertaking such checks.

Bankruptcies are public record. However, employers cannot reject applicants solely because they have filed for bankruptcy. 11 U.S.C. § 525.

### **[c] Internet Search**

The Internet and social media provide rich resources for information that pertains to an individual's suitability for employment—such as his or her dangerous tendencies, but a Google search can also expose an employer to liability. As discussed above, federal law prohibits an employer from refusing to hire an applicant because of his race, color, religion, sex, or national origin. Additional federal statutes prohibit refusal to hire because of age, disability, and military service. Often, information posted by individuals will be sufficient for an employer to discern protected characteristics. For example, a Facebook page could indicate that an individual is affiliated with gay rights groups leading to the conclusion that he is gay, or social media could reflect the efforts of another individual to become pregnant. Also, an employer might decide not to hire a job applicant after seeing that he “likes” a particular religious website. Refusal-to-hire claims are difficult to prove; however, online searches leave a trail and may be admissible as evidence in civil litigation.

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In one major refusal-to-hire case, a leading candidate for a teaching position at the University of Kentucky was not selected after someone at the school performed an Internet search and turned up evidence of his extreme evangelical beliefs. The university informed the applicant of the Internet search and of its concern about his views. The school hired someone else, and the rejected candidate sued. *Gaskell v. University of Kentucky*, Civil Action No. 09-244, 2010 WL 4867630 (E.D. Ky. Nov. 23, 2010). The case settled for \$125,000. Refusal-to-hire claims may become more prevalent as more companies decide to screen applicants online.

### **[d] Medical Records**

At the pre-offer stage of the hiring process, disability-related questions and medical examinations are prohibited under the Americans with Disabilities Act (ADA). Furthermore, employers cannot use medical information or the fact that an applicant filed a workers' compensation claim to discriminate against applicants. 42 U.S.C. § 12101. In Georgia, workers' compensation applications and appeals are not public records, therefore, this information will not likely be involved in a background check.

### **[e] Disposal of Materials Obtained Through Background Checks**

When an employer has completed its use of background materials, the best practice is to securely dispose of the report and any information gathered from it. That can include burning, pulverizing, or shredding paper documents and disposing of electronic information so that it cannot be read or reconstructed.

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### **§1.04 Legal Eligibility: Immigration Compliance**

In 2006, the State of Georgia enacted the Georgia Security and Immigration Compliance Act (GSICA), a comprehensive bill aimed at prohibiting public employers from hiring illegal immigrants. For purposes of GSICA, a “public employer” is every department, agency, or instrumentality of the state or a political subdivision of the state. O.C.G.A. § 13-10-90(5). Pursuant to O.C.G.A. § 20-5-40, public library systems are local units of administration that have been created through participating agreements among city and county governments. Thus, the public libraries within the state of Georgia are “public employers” and are governed by GSICA.

GSICA requires that all public employers verify employment eligibility of all newly hired employees through participation in a federal work authorization program. O.C.G.A. § 13-10-91(a).

Public libraries are often the recipient of citizen volunteer work, and so, the question arises as to whether volunteers are included under GSICA. The act does not specifically define “employee;” however, federal immigration regulations related to employment eligibility apply only to individuals who perform work in exchange for remuneration. U.S. Department of Homeland Security, Citizenship and Immigration Services, Handbook for Employers, Instructions for Completing Form I-9 (Employment Eligibility Verification Form) (current as of July 2017), <http://www.uscis.gov/files/form/m-274.pdf>. Accessed March 26, 2018. Therefore, volunteers do not likely fall within the purview GSICA. Thus, there would be no requirement to verify employment eligibility in the context of immigration status for these individuals.

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Another issue for public libraries to consider is whether their vendors are properly adhering to immigration laws with respect to eligibility. GSICA provides that public employers may enter into contracts for the performance of physical services only with contractors that are enrolled in a federal work authorization program to verify the status of its employees. O.C.G.A. § 13-10-91(b). Therefore, GSICA imposes a limitation on a public library when choosing a contractor (or subcontractor) for the performance of physical services. Because the law specifically states that it applies to contracts for the “physical performance of services,” however, GSICA does not appear to apply to contractors who provide only goods. Mark J. Newman and Hon-Vinh Duong, “The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia—“Think Globally.... Act Locally,”” *Georgia Bar Journal* 13: 4 (2007): n.22. Accordingly, booksellers, software vendors, and other suppliers of goods would not fall within GSICA. But copier repair or other maintenance work is within the category of “physical performance of services” and would, therefore, trigger the requirements of GSICA. For more information about obtaining the proper documentation from contractors in order to comply with GSICA, review Georgia Department of Labor’s rules for Chapter 300-10-1, “Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program” ([http://www.dol.state.ga.us/pdf/rules/300\\_10\\_1.pdf](http://www.dol.state.ga.us/pdf/rules/300_10_1.pdf)). Accessed April 13, 2018.

### **§1.05 Diversity Efforts**

A primary goal of public librarianship is providing equal access to information for all persons in a library’s community. The American Library

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Association (ALA) suggests that to accomplish this aim, a library's workforce must be reflective of the society it serves. A diverse workforce within the public library fosters an environment that is welcoming to diverse patrons and ensures that diverse perspectives and skills are part of the library's decision making. ALA offers educational information on developing this type of diversity when hiring library employees.

<http://www.ala.org/advocacy/diversity/workforcedevelopment/recruitmentfordiversity>. This webinar provides advice for working with human resources, including crafting the job description and exploring infrastructure support; working through the recruitment process, including outreach to multicultural groups; and developing institutional and organizational support, such as scholarships, training, and mentoring.

Increasing diversity among library workers begins with the job description. Care should be taken that the description is not so restrictive that it limits potential applicants. The description must include the essential and necessary skills and qualifications for the job; but also, it must be free of any unnecessary qualifications that might prohibit the widest possible pool of applicants. This is true even if qualifications are added for the purpose of encouraging diversity. For example, adding a language requirement to a job description is valid only when the job calls for it. Including a language requirement for the sole purpose of encouraging applicants from particular branches of the community could open the employer up to claims of reverse discrimination.

Legitimate efforts to generate a diverse applicant pool include stating that the organization serves a diverse or underrepresented community and that it is

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seeking individuals who have experience successfully managing diverse teams or serving diverse populations.

Another avenue to achieve diversity in the library's workforce is by educating those tasked with recruitment and selection. Members of hiring committees may benefit from understanding the goals of a more diverse workforce and the opportunities for more diversity within the organization. Discussing the library's goals and consideration for under-represented groups and the implications of affirmative action and equal employment opportunity with members of the committee is valuable.

Next, consider the application process; it should not be a barrier to employment. Making the application process accessible can be as simple as providing contact information for individuals with disabilities who may desire accommodations in the application process.

Also, where jobs are posted affects the diversity of the applicant pool. Using the widest means of communicating job opportunities will increase diversity among those applying.

An additional method of fostering diversity in the library workplace is to be equally responsive to all applicants who seek information about the position. While only one applicant will ultimately be selected for a vacant position, creating a courteous and respectful experience for all those who demonstrate an interest in working with the library will encourage wider participation regarding future job opportunities.

In sum, creating diversity within the library workforce stems from encouraging the widest range of applicants within the profession and the

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community. Generally, it is not a good idea to add prerequisites to the job description for the mere purpose of promoting diversity. Job requirements must be legitimate, i.e., they must be necessary to perform the job. Otherwise, an employer could be subject to claims of reverse discrimination.

### **§ 1.06 Nepotism**

Black's Law Dictionary defines nepotism as "bestowal of patronage by public officers in appointing others to positions by reason of blood or marital relationship to the appointing authority." A more general definition is provided by dictionary.com: "favoritism shown to relatives or close friends by those with power or influence."

Organizations, particularly governmental in nature, avoid nepotism because it is seen as unfair, and it brings to mind more sinister concepts like cronyism and the spoils system. Most public employers have policies against nepotism in making hiring decisions. For example, the Georgia Board of Regents has the following policy regarding employment of relatives:

No individual shall be employed in a department or unit which will result in the existence of a subordinate-superior relationship between such individual and any relative of such individual through any line of authority. As used herein, "line of authority" shall mean authority extending vertically through one or more organizational levels of supervision or management.

Relatives are defined as husbands and wives, parents and children, brothers, sisters, and any in-law of any of the foregoing.

Anti-nepotism has been legislated in Georgia with respect to who is eligible to serve on a local school board and who is eligible for employment in public schools.

O.C.G.A. §§ 20-2-51(c)(4)(A), 20-2-101(b)(2). Georgia's statutes governing public library boards are not as specific; however, the policy reasons for the anti-nepotism provisions of the school board statutes apply equally to library boards.

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O.C.G.A. § 20-2-51(c)(4)(A) provides in pertinent part:

No person who has an immediate family member sitting on a local board of education or serving as the local school superintendent or as a principal, assistant principal, or system administrative staff in the local school system shall be eligible to serve as a member of such local board of education. As used in this paragraph, the term “immediate family member” means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent.

Likewise, O.C.G.A. § 20-2-101(b)(2) prohibits employment of individuals who have immediate relations serving on a school board in high level positions within the schools.

Therefore, utilizing the school board anti-nepotism statutes as guidance for appropriate policy for public library boards would mean that an individual with a spouse (or child, sibling, parent, or in-laws of the same degree) serving on a library board or employed as an administrator of a library should not serve on that library’s board and vice-versa. Note that the legal definition of nepotism and the Georgia statutes pertaining to school boards are limited to immediate family members. In other words, a situation in which a library board is considering hiring the niece of a board member to serve as library director does not raise nepotism concerns. But when the board is considering employing the daughter of the board member, there is a nepotism issue.

Even in situations where the family relationship is not close enough to arise to nepotism, the overlap of family relations and friendship with public service can create ethical questions. The Georgia Public Library Trustee Manual states, “Conflicts of interest by any board member are the concern of all members of the board. A trustee or family member may not receive any gain, tangible or intangible, in dealing with the library.” Similarly, two tenets of the Ethics Statement for Public

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Library Trustees adopted by the Board of Directors of the American Library Trustee Association are:

- Trustees must avoid situations in which personal interests might be served or financial benefits gained as a result of their position or access to privileged library information, for either themselves or others.
- A trustee shall immediately disqualify him/herself whenever the appearance of a conflict of interest exists.

*See Chapter 3: Trustees & Friends, Ethics at § 4.01 [d].*

Applying these guidelines to the example of a library board considering employing the niece of a board member as library director indicates that the related board member would be wise to withdraw from the employment decision making. In the event the related applicant becomes library director, the related board member must be vigilant to avoid any essence of conflict of interest.

### **§1.07 Probationary Period**

As a general matter, Georgia is an at-will employment state, which means that absent an employment contract, an employee can be terminated at any time without reason or for any reason so long as it is not an illegal reason such as discrimination. Despite the pro-employer environment, it has become common practice for employers to start new employees in a probationary period. However, probationary hiring can be confusing for employers and employees alike. The use of probationary hiring began in the context of collective bargaining agreements; the practice allowed employers to carve out a short, introductory period that would not be governed by the same termination requirements as the regular employment period under the agreement. Generally, that meant that during the probationary period, a union employee could be let go without concern for just cause or other rules

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governing termination. In terms of an at-will employment relationship, though, probationary hiring makes little sense because any employee can be terminated at any time in his or her employment with or without cause; setting aside a special introductory period does not change that.

Arguably, using a probationary period erodes an employer's at-will rights because it implies some increased level of job security after the period ends. Therefore, in order to maintain at-will employment relationships employers should evaluate whether there is a real benefit to using a probationary period.

There is no problem with an employer creating a preliminary period during which new hires are not eligible for benefits or to take vacation. What the employer should seek to avoid is the implication that after a certain time period, an employee becomes "permanent."

Employers who have utilized probationary periods in the past have not automatically created contracts with employees who were probationary hires. Rather, courts look to the totality of the circumstances including what information is conveyed to the employee via an employee handbook and what the employee has been told about his or her employment status.

While it is unlikely that an organization will terminate an employee without cause, having the right to do so is valuable. Likewise, the right to fire an employee without explanation and justification benefits the employer. Giving up these rights through use of a probationary hiring system simply weakens the position of the employer with no real benefit in exchange.

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### B. Active Employment

#### §1.21 Public Employee First Amendment Rights

##### [a] Speaking on Matters of Public Concern

Because Georgia is an at-will employment state, a non-contractual employee can be terminated at any time without reason or for any reason so long as it is not an illegal reason. Because public libraries are governmental entities, however, employees are afforded additional protections not implicated in the private sector. In particular, the First Amendment to the United States Constitution protects a public employee from an adverse employment action in retaliation for speaking out about a matter of public concern.

Examples of public employee conduct resulting in lawsuits challenging discipline for allegedly protected speech include:

- Criticizing a police policy that placed primarily African-American officers on the front lines of a community-policing project in certain neighborhoods.
- Uttering a racial slur at a dinner party.
- Testifying at a supervisor's criminal trial.
- Refusing to change a college student's grade from an F to an "incomplete" when the student had attended only three of 15 classes.
- Failing to remove a religious pin from a uniform.
- Speaking during the public comment session of a city council meeting.

Like the government employers who disciplined or discharged employees in the above examples, public library managers may be tempted to take action against an employee who publicly criticizes library supervisors or openly challenges administration decisions such as how funds are being utilized. Prior to taking such action, however, library administrators must analyze whether the employee speech is protected.

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In 1968, the United States Supreme Court first recognized meaningful protection for public employee speech in a case involving a public school teacher who was fired for writing a letter to the local newspaper criticizing the school board about a funding issue. *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968). The teacher brought a retaliation claim and ultimately prevailed. The school district was required to reinstate the teacher. What was important to the Supreme Court in the *Pickering* case was “[t]he public interest in having free and unhindered debate on matters of public importance.” 391 U.S. at 573. The Court found the content of the teacher’s letter--whether the school system required additional funds and how those funds should be distributed--to be “matter[s] of legitimate public concern” on which the public would benefit from the teacher’s opinion. 391 U.S. at 571-72.

In 1983, the Supreme Court refined its jurisprudence on public employee speech to categorically exclude claims based on employee speech not involving a matter of public concern. *Connick v. Myers*, 461 U.S. 138 (1983). In *Connick*, the public employee was an assistant district attorney who was discharged for distributing a questionnaire to her coworkers asking their opinions on office policies, their confidence in their supervisors, and whether they felt pressured to work on political campaigns. *Id.* at 140-41. The Court decided that if the questionnaire did not constitute speech on a matter of public concern, there was no basis “to scrutinize the reasons for her discharge.” *Id.* at 146. Determining that only the claim related the question about forced campaigning to involve speech on a matter of public concern, the Court then weighed the employee’s interest in asking that question against her employer’s interest in managing its office. Because of concerns about the possibility of constitutionalizing a public employee’s grievance process and



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recognition of the government employer's need for wide discretion in managing its operations and personnel for the public's ultimate benefit, the Court ultimately found in favor of the employer.

More recently, the Supreme Court eroded First Amendment protections for public employee speech by carving out statements made pursuant to official duties. *Garcetti v. Ceballos*, 547 U.S. 410 (2006). The 2006 *Garcetti* case held that “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” *Id.* at 421.

As a government agency, a public library must be particularly cautious about disciplining or terminating an employee for statements touching on public concerns but outside the scope of an employee's official duties. Disciplining a library employee for writing a letter to the editor as a citizen concerned about how the library uses its funding or for criticizing supervisory decisions by library administrators raises clear First Amendment questions. Thus, in order for a public library to prevail in a court challenge or to avoid litigation entirely, its decision makers must ensure that library's interest in maintaining an efficient workplace outweighs the individual employee's interest in free expression.

Public employees may not rely on the First Amendment as an absolute shield to disciplinary actions. Certainly, personal disputes and grievances are not protected. Also, an employee speaking as part of his or her official duties may not seek First Amendment protection. But, administrators of public libraries, governmental employers, must be aware that their employees' discussions on

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matters of public concern are constitutionally protected, and therefore, any adverse action taken against an employee based on those discussions is actionable.

### **[b] Running for Office**

The United States Supreme Court has recognized some constitutional right to candidacy. *Bullock v. Carter*, 405 U.S. 134, 142-43 (1972). In large part, that right is based on the First Amendment's guarantee of a right of association. Thus, whether a public library employee may be prohibited from seeking elective office implicates First Amendment analysis. Additionally, there are federal, state, and local laws that address the issue.

In 1939, the United States Congress passed the Hatch Act, which prohibited many state and local government employees from becoming candidates for election to office in partisan elections, whether in their own jurisdictions or elsewhere. That prohibition applied to employees of the state and of cities and counties whose principal employment was in connection with an activity which was financed in whole or in part by federal funds. On December 19, 2012, Congress passed the Hatch Act Modernization Act of 2012, which no longer prohibits state and local government employees from running for partisan office unless the employee's salary is paid for completely by federal loans or grants. Therefore, federal law would prohibit a public library employee from running for elective office only if that employee's salary is provided exclusively through federal funding.

In addition to the federal law discussed above, the state of Georgia has enacted a statute providing that "No rules or regulations of any state agency, department, or authority shall prohibit nonelective officers or employees of this state from offering for or holding any elective or appointive office of a political subdivision

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of this state or any elective or appointive office of a political party or political organization of this state, provided that the office is not full time and does not conflict with the performance of the official duties of the person as a state employee.” O.C.G.A. § 45-10-70. Of course, this statute does not apply to local government employees. However, individual counties, municipalities, and other political structures may have ordinances or regulations similar to O.C.G.A. § 45-10-70, which prohibit their employees from running for elective office.

Georgia courts have held that any restrictions upon the right to run for elective office imposed by a government employer are constitutionally permissible where the government entity impairing the right shows that the strictures placed on the ability to run for office are reasonably necessary to achieve a compelling public objective. That is (1) that the “ends” of the challenged regulations are compelling and (2) that the “means” are reasonably necessary in order to justify impairing plaintiff’s First Amendment rights. *MacKenzie v. Snow*, 675 F.Supp. 1333, 1339 (N.D. Ga., 1987).

According to a 2002 Georgia Attorney General Opinion (Ga. Op. Att’y Gen. No. 02-7 (Oct. 25, 2002)):

The common-law doctrine of incompatibility of offices arises out of the public policy that an officeholder’s performance should not be influenced by divided loyalties. *Dunn v. Froelich*, 382 A.2d 686 (N.J. 1978). Incompatibility exists where one office is subordinate to another, subject to its supervision or control, or the duties conflict, thus inviting the incumbent to prefer one obligation to another. *Gryzik v. State*, 380 So.2d 1102, 1104 (Fla. 1980). Op. Att’y Gen. U83-55; *see also*, Op. Att’y Gen. U84-22. 1985 Op. Att’y Gen. 85-28 at 68.

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“If the office holder in one capacity supervises or reviews the functions he has performed in his other capacity, common-law incompatibility exists.” 1983 Op. Att’y Gen. U83-36 at 261.

A conflict may also arise even though there is no “direct supervision or control” of one position over the other. 1984 Op. Att’y Gen. U84-22 at 238. Instead, where there is even the potential for abuse arising from the holding of two such offices, there is an impermissible conflict of interest created. *Id.*; 1980 Op. Att’y Gen. 80-64. Relying on the potential for abuse theory, the Georgia Attorney General opined that a county librarian should not serve on the county’s Board of Education. *Id.* The basis for the conclusion was the fact that the Board of Education chooses two members of the six-person library board and provides a portion of the library’s funding. Thus, the county librarian would be in a position to unduly influence her own employer (the library board) and affect financial decisions related to her own library; even in the absence of abuse, these facts rendered the two positions incompatible.

In addition to the federal and state limitations on government employees holding elective office, some individual governmental employers have policies on the issue. For example, the Georgia Board of Regents has the following policy, which has been approved by the Georgia Attorney General:

### 8.2.15.3 Political

As responsible and interested citizens in a democratic society, USG employees are encouraged to fulfill their civic obligations and otherwise engage in the normal political processes of society. Nevertheless, it is inappropriate for USG personnel to manage or enter political campaigns while on duty to perform services for the USG or to hold elective political office at the state or federal level while employed by the USG.

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Therefore, the following policies governing political activities are hereby adopted:

Employees may not manage or take an active part in a political campaign which interferes with the performance of duties or services for which he or she receives compensation from the USG.

Employees may not hold elective political office at the state or federal level.

Employees seeking elective political office at the state or federal level must first request a leave of absence without pay beginning prior to qualification as a candidate in a primary or general election and ending after the general or final election. If elected to state or federal office such person must resign prior to assuming office.

Employees may seek and hold elective office at other than the state or federal level, or appointive office, when such candidacy for or holding of the office does not conflict or interfere with the employee's duties and responsibilities to the institution or the USG.

Approved by 1998 Op. Att'y Gen. 98-5.

While public library employees are not employed directly by the Board of Regents, the Georgia Public Library Service is a part of the Board of Regents. Accordingly, public library systems in the state may look to this policy for guidance in creating policies applicable to their employees.

### **[c] Discussing Religion in the Workplace**

In a nation founded as a haven for religious refugees, religion has always mattered, and continues to matter a great deal to many Americans. Expressions of religious belief in the workplace, however, can constitute actionable harassment. Additionally, as governmental entities, public libraries must be concerned about violating the constitutional prohibition against the establishment of religion.

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### [i] Harassment

Religious harassment in violation of Title VII of the Civil Rights Act of 1964 (Title VII) occurs when an employee is “required or coerced to abandon, alter, or adopt a religious practice as a condition of employment,” or when an employee is subjected to hostile or abusive statements or conduct that concern religion. Title VII's protections against religious discrimination apply equally to those who practice a non-theistic religion and to those who profess no religious belief. *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961). Included within this category are unwelcome impositions of religious views or practices on employees (proselytizing behavior).

Applying appropriate limitations on religious expression is important for public library administrators in order to avoid legal challenges by employees wrongfully subjected to religious harassment. This is particularly true when the religious expression is directed from those in positions of power toward subordinates.

Courts that have addressed employee claims stemming from unwelcome religious expression by supervisors have little concern with a supervisor's right to religious expression in the workplace and any spiritual hardship a supervisor would suffer if this expression were limited. *Equal Emp't Opportunity Comm'n v. Townley Engg & Mfg. Co.*, 859 F.2d 610, 620 (9th Cir. 1988); *Brown Transp. Corp. v. Com.*, *Pennsylvania Human Relations Comm'n*, 578 A.2d 555 (Cmwlth. Ct. of Penn, 1990). Instead, courts look to whether any spiritual hardship suffered by the supervisor had an adverse impact on the conduct of the day-to-day business of the workplace.

In a case against a municipality, an employee who demonstrated a work environment dominated by a supervisor bent on reforming the employee's religious

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life prevailed on her hostile work environment claim. *Venters v. City of Delphi*, 123 F.3d 956 (7th Cir. 1997). Notably, the supervisor's stated intentions were to bring the employee the comfort and security that he believed would result from living a Christian life. This situation is analogous to a supervisor in a public library repeatedly urging a subordinate to accept and embrace a particular religious faith. While the supervisor may be well meaning and genuinely believe he is acting for the good of the employee, such conduct subjects the library to serious risk of a hostile work environment claim—one that will likely be successful.

Below are examples of more religious harassment lawsuits:

- Subordinate sued because the supervisor had repeatedly made comments to her concerning religion, including comments that she was a sinner and would go to hell. *Peck v. Sony Music Corp.* (S.D.N.Y. 1995).
- Atheist employee sued her employer because she was required to attend monthly staff meetings that included religious exercises. *Young v. Southwestern Sav. and Loan Ass'n*, 509 F.2d 140 (5th Cir. 1975).
- Employee sued because of repeated incidents of Christian proselytizing by his supervisor. *Sprague v. Adventures, Inc.*, 121 F. App'x 813 (10th Cir. 2005).
- Muslim employee filed a claim for religious harassment based in part on a co-worker leaving a Christian pamphlet on his desk at work. *Bourini v. Bridgestone/Firestone N. Am. Tire, LLC*, 136 F. App'x 747 (6th Cir. 2005).
- An employer who included bible verses along with each paycheck was sued by an employee. *Albert v. Genesis 2k*, No. 13-CV-62-JPS, 2013 WL 3879913 (E.D. Wis. July 26, 2013).

### **[ii] Establishment of Religion (Separation of Church & State)**

The First Amendment's Establishment Clause prohibits the government from making any law "respecting an establishment of religion." This clause not only forbids the government from establishing an official religion, but also prohibits government actions that unduly favor one religion over another. According to the United States Supreme Court, the Establishment Clause was intended to erect a "wall of separation between Church and State." *Everson v. Bd. of Educ. of Ewing*,

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330 U.S. 1, 16 (1947). When the First Amendment was adopted in 1791, the Establishment Clause applied only to the federal government, prohibiting the federal government from any involvement in religion. By 1833, all states had disestablished religion from government, providing protections for religious liberty in state constitutions. In the Twentieth Century, the Supreme Court applied the establishment clause to the states through the Fourteenth Amendment. *Id.* Today, the Establishment Clause prohibits all levels of government from either advancing or inhibiting religion.

Most claims against state and local governmental entities for Establishment Clause violations involve prayer at official meetings or public display of religious symbols on government property. Another well-known Establishment Clause claim involves states placing “In God we Trust” on license plates. However, courts have recognized that governmental entities have an interest in prohibiting the imposition of religious beliefs by employees in order to avoid Establishment Clause claims. *Knight v. Connecticut Dep’t of Pub. Health*, 275 F.3d 156, 165 (2d Cir. 2001), *Asselin v. Santa Clara Cty.*, 185 F.3d 865 (9th Cir. 1999). Therefore, repeated instances of religion-related talk or conduct could make a government employer such as a public library a target for an Establishment Clause violation claim.

### **[d] Discussing Politics in the Workplace**

Unlike religion, the subject of politics does not implicate the Establishment Clause of the First Amendment. Furthermore, there is no law protecting individuals from political discrimination. As such, an employer does not have the same interest in curtailing political speech as it would when addressing religious speech. And, in



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terms of governmental employers such as public libraries, employees enjoy First Amendment rights to engage in free speech about topics of public concern.

Of course, “[o]ne person’s free speech is another person’s loud-mouthed bullying,” said Susan Milligan in her article for *Society for Human Resource Management*, “Political Debates in the Workplace: Where to Draw the Line” May 12, 2015. Discussions about politics have the potential to become heated and unruly. Governmental employers do have an interest in maintaining a harmonious workplace in which to conduct the public’s business efficiently. Therefore, rules setting limits on employee discussions about politics at work that are imposed by public employer can pass constitutional muster. The question is where to set the boundaries.

Generally, what matters to courts is whether an employer is imposing a content-based or content-neutral regulation on speech. *Police Dep’t v. Mosley*, 408 U.S. 92 (1972); *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975); *Schacht v. United States*, 398 U.S. 58 (1970), *Greer v. Spock*, 424 U.S. 828 (1976); *Civil Serv. Comm’n v. Nat’l Ass’n of Letter Carriers*, 413 U.S. 548 (1973); *United States v. O’Brien*, 391 U.S. 367 (1968). What this means is that employers must create uniform policies that are applied and enforced without regard to the political viewpoints expressed therein. For example, an employer may ban employees from displaying any campaign posters in the office, but may not enforce such a blanket prohibition unevenly or target only campaign posters that endorse a particular political party. Further, the restrictions on political speech may not be more extensive than necessary to serve the employer’s interest in avoiding disruptions and maintaining productivity in the workplace.

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In sum, talking politics at work in a public library does not raise the same exposure to legal claims for a governmental employer as discussions about religion, i.e., claims for Establishment Clause violations and religious harassment. And, as public employees, library workers have some level of First Amendment rights to discuss matters of public concern, which includes politics. Therefore efforts to limit discussions about politics in the workplace are not as crucial as those undertaken regarding religion. But, governmental entities such as public libraries can and should take steps to ensure that its workforce is focused on the primary function of providing efficient services to the public even if this results in some limitations on free expression.

### § 1.22 Privacy in the Workplace

In 1905, Georgia became the first state to recognize a general right of privacy in the Georgia Supreme Court decision of *Pavesich v. New England Life Ins. Co.*, 122 Ga. 190, 50 S.E. 68 (1905). Under the current state of Georgia law, “invasion of privacy” is actually a general designation for four related but distinct causes of action: (1) intrusion upon a person’s seclusion or solitude, or into his private affairs; (2) public disclosure of embarrassing facts about a person; (3) publicity which places a person in a false light in the public eye; and (4) appropriation of a person’s name or likeness for advantage or benefit. *Powell v. State*, 270 Ga. 327, 510 S.E.2d 18 (1998); *Yarbray v. Southern Bell Tel. & Tel. Co.*, 261 Ga. 703, 409 S.E.2d 835 (1991); *Cabaniss v. Hipsley*, 114 Ga. App. 367, 151 S.E.2d 496 (1966).

#### **[a] Intrusion upon Seclusion: Surveillance Cameras**

Of the four types of invasion of privacy recognized under Georgia law, unreasonable intrusion upon seclusion is the cause of action that arises most

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frequently in employment cases. Georgia courts define invasion of privacy as (1) a physical intrusion (2) into an area where a person has a reasonable expectation of privacy. *Cox Commc'ns, Inc. v. Lowe*, 173 Ga. App. 812, 328 S.E.2d 384 (1985); *Johnson v. Prime Bank*, 219 Ga. App. 29, 464 S.E.2d 24 (1995).

In addition to the state law tort regarding privacy, the Fourth Amendment of the United States Constitution protects against undue government intrusions both in civil and criminal settings, even safeguarding individuals against the government as an employer. *Vega-Rodriguez v. Puerto Rico Tel. Co.*, 110 F.3d 174, 179 (1st Cir. 1997) (citing *Nat'l Treasury Emps. Union v. Von Raab*, 489 U.S. 656 (1989)). Therefore, public employees have an added layer of constitutional protection from a prying employer.

In *O'Connor v. Ortega*, 480 U.S. 709, 715 (1987), the United States Supreme Court determined that a public employee sometimes may enjoy a reasonable expectation of privacy in the workplace vis-a-vis searches by a supervisor or other representative of a public employer.

Thus, video surveillance of public library employees is lawful only if the camera is recording areas where an employee would have no expectation of privacy. For example, the First Circuit Court of Appeals held that employees lacked an objectively reasonable expectation of privacy against disclosed, soundless video surveillance while working in an open work area. *Vega-Rodriguez*, 110 F.3d at 180. On the other hand, police officers in California successfully sued under the Fourth Amendment when they were subjected to secret video camera surveillance in their locker room. *Trujillo v. City of Ontario*, 428 F.Supp.2d 1094 (C.D. Cal. 2006).

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### [b] Personal Information

Public disclosure of embarrassing facts about a person can give rise to an invasion of privacy claim. Under Georgia law, this type of invasion of privacy occurs when (1) there is a public disclosure; (2) of private, secluded or secret facts; (3) that is offensive or objectionable to a person of ordinary sensibility under the circumstances. *Cabaniss v. Hipsley*, 114 Ga. App. 367, 151 S.E.2d 496 (1966). Georgia courts have required very egregious conduct before they find a disclosure offensive or objectionable. *Cox Commc'ns, Inc. v. Lowe*, 173 Ga. App. 812, 328 S.E.2d 384 (1985) (disclosure of inmate's incarceration not enough); *Sparks v. Thurmond*, 171 Ga. App. 138, 319 S.E.2d 46 (1984) (disclosure of plaintiff's arrest record not enough); *Bazemore v. Savannah Hosp.*, 171 Ga. 257, 155 S.E. 194 (1930) (publication of unauthorized photograph of deceased infant born with physical deformity deemed highly offensive); *Hudson v. Montcalm Pub. Corp.*, 190 Ga. App. 629, 379 S.E.2d 572 (1989) (plaintiff's ex-husband submitted plaintiff's nude photograph to magazine for publication without the plaintiff's consent and the magazine published the photograph—deemed sufficient).

Employers should be aware that the Georgia Court of Appeals has held that “an employee's personnel file is generally considered confidential.” *Kobeck v. Nabisco, Inc.*, 166 Ga. App. 652, 305 S.E.2d 183 (1983) (citing 1977 Op. Att'y Gen. 77-56 (1977 WL 19300)). Inappropriate release of such information could expose an employer to liability for invasion of privacy. On the other hand, personnel records of a governmental entity are subject to Georgia's Open Records Act. Therefore, public employers may be forced to disclose information contained in personnel records and would not risk liability by properly complying with the Open Records Act.

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In addition to state law regarding privacy of personal information, medical records are provided protection under the Americans with Disabilities Act. *See* § 1.24[d][iv], herein.

### **§ 1.23 Whistleblowers**

State and federal laws protect whistleblowers from retaliation by their employers. A whistleblower is an employee who complains of or reports misconduct within the employer organization. And the employee does not have to be correct to be protected; as long as the employee has a reasonable belief that wrongdoing has taken place, the employee is considered a whistleblower, even if that belief turns out to be mistaken.

Georgia has a statute protecting whistleblowers who are public employees. O.C.G.A. § 45-1-4(d)(2). Under the statute, a public employer cannot fire a public employee for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency or for refusing to participate in any activity, policy, or practice of the public employer that the public employee has reasonable cause to believe is in violation of or noncompliance with a law, rule, or regulation. A disclosure is not protected, however, if it was made with knowledge that it was false or with reckless disregard for its truth or falsity. Moreover, the protections of the statute do not apply to policies or practices which implement or to actions by public employers against public employees who violate privilege or confidentiality obligations recognized by constitutional, statutory, or common law.

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### § 1.24 Federal Anti-Discrimination Laws

Anti-discrimination laws protect employees from adverse employment actions based on factors not directly related to the quality of an individual's work. For the most part these laws are federal.

#### [a] Title VII: Race, Color, Religion, National Origin, or Sex

Title VII of the Civil Rights Act of 1965, 42 U.S.C. § 2000e *et seq.*, prohibits discrimination on the basis of race, color, religion, national origin, or sex. Thus any adverse employment action motivated by these characteristics violates Title VII.

#### [i] Adverse Employment Action

An example of an adverse employment action could be a job transfer even without a decrease in pay. Librarians employed by the Atlanta-Fulton Public Library System who were able to prove that they were transferred because of race from jobs at the central library to what were perceived to be dead-end jobs in branch libraries successfully sued the library system and won approximately \$17 million. *Bogle v. McClure*, 332 F.3d 1347 (11th Cir. 2003).

In determining whether an employment transfer is adverse, courts consider whether an objectively reasonable employee would view the transfer as unfavorable. *Doe v. DeKalb Cty. Sch. Dist.*, 145 F.3d 1441, 1448-49 (11th Cir. 1998). The objective factors that are important are whether the transfer results in reduction in pay, loss of prestige, or diminishment of responsibilities. *Id.* “A lateral transfer that does not result in lesser pay, responsibilities, or prestige is not adverse.” *Barnhart v. Wal-Mart Stores, Inc.*, 206 Fed. App’x 890, 893 (11th Cir. 2006). Moreover, the employee’s subjective dislike of the transfer is not a factor in analyzing whether the action is adverse. *Doe*, 145 F.3d 1441, 1452. Therefore, if the job to which the

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employee is transferred would be perceived by a reasonable employee as being equal in pay, responsibility level, and prestige, there is no liability under Title VII.

Even an adverse employment action is permissible if it is based on a non-discriminatory reason. In other words, an employer is free to make employment decisions on legitimate factors such as job performance, absenteeism, insubordination, etc.

In order to substantiate that a decision was based upon a legitimate factor rather than an illegal one, an employer must maintain documentation. Regular employee evaluations should be conducted and, in the event that an employee is not meeting expectations, the employee should be informed both in person and in writing and given a reasonable period of time to correct his or her actions. Taking these steps is important in the event the employee later makes a discrimination claim.

### **[ii] Religious Accommodations**

In addition to prohibiting adverse employment actions based on the characteristics listed above, Title II requires that employers reasonably accommodate employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business. An employee who seeks religious accommodation must make the employer aware both of the need for accommodation and that it is being requested due to a conflict between religion and work.

Employer-employee cooperation and flexibility are needed to identify and achieve a reasonable accommodation. An employer may request additional information reasonably needed to evaluate the employee's requested

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accommodation. For example, if an employee has requested a schedule change to accommodate daily prayers, the employer may reasonably seek information about the religious observance, including time and duration of the daily prayers, in order to determine whether an accommodation can be granted without posing an undue hardship on the organization.

To establish that a requested accommodation is an undue hardship, the employer must demonstrate how much cost or disruption the accommodation would involve. An employer cannot rely on potential or hypothetical hardship when faced with a religious obligation that conflicts with scheduled work, but rather must rely on objective information. A mere assumption that many more people with the same religious practices as the individual being accommodated may also seek accommodation is not evidence of undue hardship.

If an employer has reasonably determined that a requested accommodation would pose an undue hardship, the next step is for the employer to explore alternative accommodations.

Under Title VII, an employer or other covered entity may use a variety of methods to provide reasonable accommodations to its employees. According to the Equal Employment Opportunity Commission, some of the most common religious accommodations are:

### 1. Scheduling Changes, Voluntary Substitutes, and Shift Swaps

An employer may be able to reasonably accommodate an employee by allowing flexible arrival and departure times, floating or optional holidays, flexible work breaks, use of lunch time in exchange for early departure, staggered work hours, and other means to enable an employee to make up time lost due to the observance of religious practices. Eliminating only part of the conflict is not sufficient, unless entirely eliminating the conflict will pose an undue hardship by



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disrupting business operations or impinging on other employees' benefits or settled expectations.

Moreover, although it would pose an undue hardship to require employees involuntarily to substitute for one another or swap shifts, the reasonable accommodation requirement can often be satisfied without undue hardship where a volunteer with substantially similar qualifications is available to cover, either for a single absence or for an extended period of time. The employer's obligation is to make a good faith effort to allow voluntary substitutions and shift swaps, and not to discourage employees from substituting for one another or trading shifts to accommodate a religious conflict. However, if the employer is on notice that the employee's religious beliefs preclude him not only from working on his Sabbath but also from inducing others to do so, reasonable accommodation requires more than merely permitting the employee to swap, absent undue hardship.

### 2. Changing an employee's job tasks or providing a lateral transfer

When an employee's religious belief or practice conflicts with a particular task, appropriate accommodations may include relieving the employee of the task or transferring the employee to a different position or location that eliminates the conflict. Whether such accommodations pose an undue hardship will depend on factors such as the nature or importance of the duty at issue, the availability of others to perform the function, and the availability of other positions.

The employee should be accommodated in his or her current position if doing so does not pose an undue hardship. If no such accommodation is possible, the employer needs to consider whether lateral transfer is a possible accommodation.

### 3. Making an exception to dress and grooming rules

When an employer has a dress or grooming policy that conflicts with an employee's religious beliefs or practices, the employee may ask for an exception to the policy as a reasonable accommodation. Religious grooming practices may relate, for example, to shaving or hair length. Religious dress may include clothes, head or face coverings, jewelry, or other items. Absent undue hardship, religious discrimination may be found where an employer fails to accommodate the employee's religious dress or grooming practices.

Some courts have concluded that it would pose an undue hardship if an employer was required to accommodate a religious dress or grooming practice that conflicts with the public image the employer wishes to convey to customers. While there may be circumstances in which allowing a particular exception to an employer's dress and grooming policy would pose an undue hardship, an employer's reliance on the broad rubric of "image" to deny a requested religious accommodation may amount to relying on customer religious bias ("customer preference") in violation of Title VII. There may be limited situations in which the need for

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uniformity of appearance is so important that modifying the dress code would pose an undue hardship. However, even in these situations, a case-by-case determination is advisable.

### 4. Use of the work facility for a religious observance

If an employee needs to use a workplace facility as a reasonable accommodation, for example use of a quiet area for prayer during break time, the employer should accommodate the request under Title VII unless it would pose an undue hardship. If the employer allows employees to use the facilities at issue for non-religious activities not related to work, it may be difficult for the employer to demonstrate that allowing the facilities to be used in the same manner for religious activities is not a reasonable accommodation or poses an undue hardship. The employer is not required to give precedence to the use of the facility for religious reasons over use for a business purpose.

### 5. Accommodating prayer, proselytizing, and other forms of religious expression

Some employees may seek to display religious icons or messages at their work stations. Others may seek to proselytize by engaging in one-on-one discussions regarding religious beliefs, distributing literature, or using a particular religious phrase when greeting others. Still others may seek to engage in prayer at their work stations or to use other areas of the workplace for either individual or group prayer or study. In some of these situations, an employee might request accommodation in advance to permit such religious expression. In other situations, the employer will not learn of the situation or be called upon to consider any action unless it receives complaints about the religious expression from either other employees or customers.

Employers should not try to suppress all religious expression in the workplace. Title VII requires that employers accommodate an employee's sincerely held religious belief in engaging in religious expression in the workplace to the extent that they can do so without undue hardship on the operation of the business. In determining whether permitting an employee to pray, proselytize, or engage in other forms of religiously oriented expression in the workplace would pose an undue hardship, relevant considerations may include the effect such expression has on co-workers, customers, or business operations. In the context of a governmental

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employer, granting a requested religious accommodation could pose an undue hardship because it would constitute government endorsement of religion in violation of the Establishment Clause of the First Amendment. Ultimately, whether to grant a religious accommodation involves a delicate balancing of the individual employee rights against the interests of the employer, other employees, and patrons.

### **[iii] Pregnancy**

In 1978, Title VII was amended to add the Pregnancy Discrimination Act, making discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII. Women affected by pregnancy or related conditions must be treated in the same manner as other employees who are similar in their ability or inability to work. 42 U.S.C. § 2000e (k).

### **[b] ADEA: Age Discrimination**

Traditionally, age sixty-five was considered the age of retirement. Today, more people are choosing to continue working full- or part-time well into their seventies and even eighties. An employer who would prefer an older worker to retire should be aware of what is required by law. Georgia is an at-will employment state; however, age is not a factor that can be utilized in making employment decisions.

The Age Discrimination in Employment Act (ADEA) prohibits age discrimination against people who are age 40 or older. 29 U.S.C. § 621. Additionally, Georgia law forbids compulsory retirement for an employee between the ages of 40 and 70. O.C.G.A. § 34-1-2. Certain occupations, such as airline pilot and police officer, are exceptions to the extent that a mandatory retirement age may legally be enforced.

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Georgia law also protects public sector employees from age discrimination. The Fair Employment Practices Act (FEPA) establishes a commission to investigate allegations of discrimination, including age, by state governmental employers. O.C.G.A. § 45-19-20 *et seq.* FEPA does not provide a private right of action to an employee but could result in state-imposed remedies including reinstatement and back pay.

An employer may have valid reasons for discharge of an employee who is over age 40, including poor performance, absenteeism, or violations of workplace policy. As for all employees, documentation of the issues that have triggered the employer's desire to dismiss the employee is crucial. However, even if there is a valid and well-documented basis for discharge, consideration of the timing of the action is important. For example, if the employee's evaluations that occurred before age 40 showed evidence of marginal performance, the employer will be hard-pressed to demonstrate that poor performance—not age—is the real reason for the termination.

Early retirement incentive plans are frequently offered by employers to reduce their work force. The ADEA allows employers to request employees who accept early retirement incentives to sign a waiver releasing all potential claims against the employer under the ADEA. The following requirements apply to such a waiver:

- It must be part of an agreement written in plain language.
- It must specifically refer to rights or claims arising under the ADEA.
- The employee may not waive rights or claims that may arise after the date that the waiver is signed.
- The employee may waive rights or claims only in exchange for money or other benefits that exceed those to which he or she is already entitled.

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- The employee must be advised in writing to consult with an attorney before signing the agreement.
- The employer must give the employee 21 days to consider the agreement before he or she signs it (or 45 days if the employee is terminated in a group layoff).
- The employee must have the right to revoke the agreement within 7 days after signing it.

29 U.S.C. § 626(f)(1).

A passive-aggressive approach to encouraging an employee to retire should be avoided. Comments by a supervisor about an employee's age, even made in a joking manner, could be evidence of an employer's discriminatory intent.

Consider the following scenario: At an office birthday party for a long-time employee, the supervisor jokes that it's time to trade in the rolling desk chair for a rocking chair. The party, which has been approved by the supervisor, includes "Over the Hill" decorations. Several weeks later, the supervisor asks the employee when she might think about "hanging'em up." On another occasion, the supervisor tells the employee she should be thinking about where she wants to spend her golden years. The employee soon announces she is retiring. After she retires, the employee sues the employer for age discrimination.

In this fact pattern, the employer did not force the employee to retire. However, the employer could be found to have constructively discharged the employee based upon her age. Succeeding on a claim for constructive discharge in an age discrimination case is not easy; "a plaintiff must demonstrate that working conditions were 'so intolerable that a reasonable person in [his] position would have been compelled to resign.'" *Poole v. Country Club of Columbus, Inc.*, 129 F.3d 551,

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553 (11th Cir. 1997). Under the facts above, it is unlikely that a reasonable person would have felt compelled to resign. Nevertheless, comments about age or subtle suggestions that the time has come for retirement could be damaging if an employee opts for legal action. For example, in a recent case in the United States District Court for the Northern District of Georgia, a sixty-seven year old employee was discharged in a reduction in force. The employer's supervisor had repeatedly asked him about his age and when he planned to retire, and the CEO of the company had months before the discharge commented to the employee that he was "really getting up there." While the reduction in force was likely legitimate and the employer had a number of non-discriminatory reasons for discharging this particular employee, those comments and questions were found by a court to be sufficient evidence to allow the employee to proceed to a jury trial with his claim of age discrimination.

Presumably, an employer's desire for an employee to retire stems from poor job performance, absenteeism, inappropriate behavior at work, etc. Therefore, the employer should take the same steps of documentation and discipline that would apply no matter an employee's age. Should it become necessary to take an adverse employment action against the employee, the employer will be in the strongest position to defend against legal action if it has clear evidence that the employee was disciplined, demoted, or discharged for a reason other than a non-discriminatory one, such as age.

### **[c] Equal Pay Act: Gender Discrimination**

The Equal Pay Act of 1963 makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. 29 U.S.C. § 206(d).

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### **[d] ADA: Disability Discrimination**

The Americans with Disabilities Act (ADA) prohibits employers from taking adverse employment action such as demotion or termination based upon an employee's disability. 42 U.S.C. § 12101 *et seq.* The law likewise protects employees from harassment based on a disability. Also, the ADA requires employers to provide reasonable accommodations to those individuals who have a disability but are otherwise qualified to do the job. Finally, the ADA contains confidentiality requirements with respect to disability-related records.

### **[i] Harassment**

It is illegal to harass an employee because he or she has a disability, had a disability in the past, or is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment). Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are non-serious, harassment is illegal when it is so frequent or severe that it creates a hostile work environment

### **[ii] Reasonable Accommodation**

The ADA requires an employer to provide a reasonable accommodation to an employee with a disability, unless doing so would cause significant difficulty or expense for the employer. Note that this standard is higher than the "undue hardship" exception regarding religious accommodation under Title VII.

A reasonable accommodation is any change in the work environment or method of work completion to help a person with a disability perform the duties of a job or enjoy the benefits and privileges of employment.

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Reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired.

### **[iii] Disability Defined**

Not everyone with a medical condition is protected by the law. In order to be protected, a person must be qualified for the job and have a disability as defined by the law. A person can show that he or she has a disability in one of three ways:

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).
- A person may be disabled if he is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

Depending on their scope and nature, “health problems” could equate to a disability under the definitions of the ADA. With regard to active employees, an employer generally can ask medical questions or require a medical exam only if the employer needs medical documentation to support an employee’s request for an accommodation or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition.

### **[iv] Confidentiality**

The ADA limits an employer’s right to make disability-related inquiries and conduct medical examinations of applicants and employees. 42 U.S.C. § 12112(d); 29 C.F.R. §§ 1630.13 and 1630.14. For active employees, an employer may ask only disability-related questions or require medical examinations that are job related and consistent with business necessity. 29 C.F.R. §1630.14(c). According to the EEOC,



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this means that an employer may only obtain medical information where it reasonably believes that an employee will be unable to perform the job or will pose a direct threat due to a medical condition. Medical information also may be obtained to determine whether an employee with a non-obvious disability is entitled to a requested reasonable accommodation or satisfies the criteria for using certain types of leave, such as leave under the Family and Medical Leave Act or under the employer's own sick leave policy. In all of these instances, however, the information sought must be limited in scope. Title I of the ADA provides that information obtained by an employer through an inquiry regarding the medical condition or history of an employee must be collected on separate forms, kept in separate medical files, and be treated as a "confidential medical record." 29 C.F.R. §1630.14(b)(1).

In addition to actual medical records, the ADA's confidentiality provisions do not permit employers to tell coworkers that an employee with a disability is receiving a reasonable accommodation. This is so because such disclosure would be tantamount to a disclosure that the employee has a disability. There are exceptions to the confidentiality rule; for example, an employer may tell a supervisor about necessary accommodations. If an employer is faced with a co-worker asking about why "special treatment" is being offered to another worker, the employer may state that the law permits different treatment and requires confidentiality.

### **[e] GINA: Genetic Information Discrimination**

Pursuant to the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff, (GINA), employers are prohibited from requesting genetic information from applicants or employees and cannot use genetic information in making employment decisions. In the event an employer must obtain medical

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information from an employee, the following “safe harbor” language should be included on any written request:

To comply with GINA, we are asking that you not provide any genetic information when responding to [a] [this] request for medical information. “Genetic information,” as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

This written warning creates a “safe harbor” for employers who inadvertently receive genetic information. If the employer previously provided this warning to the applicant or employee then the employer will not be found to be in violation of GINA. Consequently, employers that adopt this language now may avoid unnecessary litigation and future legal expenses.

### **[f] Retaliation & Legitimate Discipline**

The percentage of charges filed with the U.S. Equal Employment Opportunity Commission (EEOC) in fiscal 2017 that alleged workplace retaliation was the highest the commission has ever recorded at 48.8 %. Retaliation overtook race as the most frequently filed charge in fiscal 2010. In that year, 35.9 percent of charges alleged race discrimination, while 36.3 percent alleged retaliation.

Retaliation is defined by the law as any adverse action taken against an employee for asserting rights, filing a complaint, or supporting another employee’s complaint under a variety of laws. The most common type of retaliation claim involves an employee who alleges that he or she was first harassed or discriminated against and later punished for making a complaint to the employer or a relevant federal agency. Employers also are prohibited from punishing employees for

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exercising other rights such as asking for a reasonable accommodation of a disability under the ADA or an employee who applies for medical leave under the Family and Medical Leave Act.

What can be especially galling to an employer in defending against retaliation claims is that, under the law, even if the original complaint of harassment or discrimination turns out to be baseless or fabricated, the employer is liable if it takes any action that can be deemed retaliatory. Therefore, an employer must proceed with caution in making employment decisions about an employee who has complained about discrimination or harassment. Likewise, employees who have exercised their rights under the ADA or FMLA will warrant extra consideration. Although employers are allowed to discipline their employees, regardless of whether they've filed a complaint or exercised particular employment rights, decision makers must be especially careful in how they discipline this category of employee. For example, an employee who files what turns out to be an unfounded complaint about sexual harassment and then receives a negative performance review two months later may construe the review as retaliation for her complaint.

An employer who intends to discipline or otherwise negatively affect an employee after he or she has filed a complaint or invoked certain rights under the law must take special care to document the basis for the employment decision. In the absence of proof to the contrary, a court might be suspicious of the timing between the employee's protected actions and the subsequent adverse employment action.

It is also important to prevent unintentional retaliation. For example, an employee complains to the employer that the supervisor constantly makes

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derogatory and sexist comments. It may be tempting to simply move the employee to a different office while the claim is investigated. Despite the best of intentions in separating the employee from the alleged harasser, if the reassignment could be perceived as an adverse action, the employer would be liable for workplace retaliation. This is so because the complaining employee, not the alleged harasser, had her employment affected as a result of filing a complaint. If action is to be taken to remedy the situation, then the focus must be on the alleged wrongdoer, not the complaining employee.

Courts have held the following employment actions and workplace conduct sufficiently harmful to the protected employee to allow that employee to pursue a retaliation lawsuit:

- failure to promote;
- refusal to consider paying additional severance pay after the employee's position was eliminated;
- demotion with no decrease in pay;
- suspension without pay, even though the lost pay was subsequently reimbursed (loss of use of the funds for the time they were unpaid);
- lateral transfer to a different position with different duties;
- co-worker harassment including manure in employee's parking space, hair in her food, a rubber band shot at her, and scratches on her car where the employer did nothing to address the harassment;
- undeserved performance ratings;
- unfavorable job reference;
- name-calling by supervisor such as a "liar," a "rabble-rouser," and a "trouble-maker";
- ostracism by co-workers including refusal to work with employee, approved and acquiesced to by employer.
- selective enforcement of rules (a workplace that has been somewhat loose or lenient in making its employees abide by the policies and procedures of their employer is suddenly transformed to a workplace in which rules are rigidly enforced—often with regard to only the employee who filed a complaint or participated in other protected activity).

Participation in a protected activity does not make an employee "untouchable," or ensure that he or she can never receive legitimate corrective action

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from an employer. In order for an employee to establish a claim of retaliation, evidence must exist to demonstrate a causal connection between his or her participation in the protected activity and the adverse employment action. However, the type of causal connection that the employee must establish is not a particularly high standard. Of course, as in a discrimination claim, evidence that the employee was treated differently than other employees, evidence that the adverse employment action was taken in contravention of the organization's policy, or evidence that the employer's reasons for the adverse employment action were false can all support a retaliation lawsuit. Moreover, even close proximity in time between the adverse employment action and an employee's participation in protected activity may be sufficient to support a retaliation claim.

Regardless of whether an employee's claim of harassment or discrimination (or other protected activity) is found to have merit, any negative conduct or adverse employment decision related to that employee could result in a finding of unlawful retaliation and an award of damages. There is no guaranteed way to completely avoid a retaliation allegation, but here are some "best practices" to help avoid retaliation liability:

- Ensure policies are adhered to uniformly before a complaint of illegal behavior occurs. The employer will then have some recourse to discipline a complaining party when appropriate.
- Keep all claims by employees and resulting investigations as confidential as possible. Share information about the claim only on a "need to know" basis. If a decision maker can truthfully testify that he/she never knew about the protected activity, it is extremely difficult for the affected employee to prove a causal connection.
- When an investigation or charge is closed, remain vigilant. Alert managers and supervisors who know of the protected activity of the risk of a retaliation claim.

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- Take prompt investigatory (and remedial if appropriate) action if you believe that any adverse treatment or employment decision may be motivated in any way by an employee's participation in protected activity.
- If a tough call arises, such as where it appears the conduct of an employee who has engaged in protected activity legitimately warrants corrective action or termination, consult with upper level human resources professionals and legal counsel prior to implementing the action. Know the risk associated with each option.

By remaining alert, knowledgeable, and vigilant, public library administrators protect against unpleasant circumstances and potential financial consequences of being sued for retaliation.

### § 1.25 Wage & Hour

#### **[a] Misclassification: Employee or Independent Contractor**

The distinction between employee and independent contractor is crucial because the applicable laws are different for each. Courts are seeing an increase in litigation centered around the proper classification of workers as employees or independent contractors. According to a recent story in Wolters Kluwer Employment Law Daily (Milam-Perez), the trend began through challenges by federal and state government agencies and has been picked up by the private bar in claims from the workers themselves.

The line between an employee and an independent contractor can be very thin, and great care must be taken in attempting to walk that line when hiring an individual who could arguably be on either side of the contractor line.

Unfortunately, many employers view the two types of employment relationships as synonymous and want to label workers as independent contractors but treat them like employees. Utilizing independent contractors may be economically advantageous because generally contractors do not qualify for benefits

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and do not expose the employer to liability for negligent acts. Misclassification of employees as independent contractors in order to save money, however, is not a prudent employment practice because if a decision is challenged and the challenge is upheld, the employer could be on the hook for damages far in excess of the original cost savings.

What matters to courts and the federal government is the reality of the relationship between the worker and the employer, not the label given to the worker.

The following factors are weighed in ascertaining the status of a worker:

- the extent of the employer's control and supervision over the worker, including directions on scheduling and performance of work;
- the kind of occupation and nature of skill required, including whether skills are obtained in the workplace;
- responsibility for the costs of operation, such as equipment, supplies, fees, licenses, workplace, and maintenance of operations;
- method and form of payment and benefits; and
- length of job commitment and/or expectations.

Most significant among the factors examined in determining whether an individual is an employee or an independent contractor is the right to control the way in which the work involved is done. It is solely when an employer has the right to control only the results or the end sought to be accomplished, and the contracting party independently determines the details and means of accomplishing that result, that an independent contractor relationship exists.

It is advisable that library administrators periodically review and apply these factors to individuals classified as independent contractors to ensure that their classifications are correct. Proper classification of workers is a preventative measure worth taking.

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### [b] Overtime

The Fair Labor Standards Act (FLSA) provides that non-exempt employees of public agencies may be rewarded for overtime through compensatory time off, i.e., comp time, in lieu of monetary payment. 29 U.S.C. § 207(o). The rate of comp time accrual is at least 1.5 hours for every hour of overtime worked. Employees may accrue a maximum of 240 hours of comp time (160 hours of overtime) before being required to reduce the time by use or cash out. The employer may compel use or cash out at any time.

Employees whose duties are executive, administrative, or professional fall under the white collar exemption and are not covered by the FLSA. To qualify for the white collar exemption, the employee must be paid a salary regardless of hours worked and make at least \$455 per week. In evaluating whether an employee falls within the exemption, it is important to look beyond the job title to the duties performed. For more information on the white collar exemption, go to <http://www.dol.gov/whd/regs/compliance/fairpay/main.htm>.

A non-exempt employee who voluntarily works overtime and even agrees to waive his or her right to overtime compensation still must be paid (or provided comp time) for the additional hours. The United States Supreme Court has stated that the purposes of the FLSA “require that it be applied even to those who would decline its protections. If an exception to the Act were carved out for employees willing to testify that they performed work ‘voluntarily,’ employers might be able to use superior bargaining power to coerce employees to make such assertions, or to waive their protections under the Act.” *Tony and Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 302 (1985).



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Pursuant to federal regulations, an individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer. 29 C.F.R. § 553.101(d). Therefore, an employer must properly compensate the employee or prevent him or her from working overtime in order to comply with the FLSA. Notably, however, the Department of Labor has opined that when an employee of an organization freely provides services that are not of the same type of service the employee is employed to perform at times outside the employee's normal working hours, the volunteer activity does not count as hours worked for purposes of the FLSA. Therefore, in the context of a public library, it is likely that a library worker who chooses to volunteer in a fundraising event for the library would not be "working" during those fundraising hours. On the other hand, it is clear that time spent for public or charitable purposes at the employer's request, or under his or her direction or control, or while the employee is required to be on the premises, is working time under the FLSA. *Tennessee Coal, Iron R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598 (1944).

### **[c] Form of Payment: Direct Deposit**

According to the United States Treasury Department, "Electronic payments have become almost universally accepted and are standard across all sectors of the economy." The only restrictions placed on employers by federal law with respect to payment of wages by direct deposit are that the employer may not require an employee to use direct deposit at a specific bank or charge an employee fees based on payment method. 15 U.S.C. § 1693k.

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Laws vary from state to state as to the legality of mandatory direct deposit. The plain language of Georgia's statute regarding the method for payment of wages provides that, with the consent of the employee, wages may be paid by credit transfer to an employee's bank account. O.C.G.A. § 34-7-2. A strict construction of this statute would indicate that forcing employees to receive wages via direct deposit is not allowed.

On the other hand, a broader reading of the statute leaves open the possibility of conditioning employment on consent to receive wages via direct deposit. As of May 1, 2010, the State of Georgia made consent to direct deposit a condition of employment for new hires and re-hires. In other words, an applicant will be awarded the job he or she seeks upon agreement to receipt of wages via direct deposit. Therefore, there is a basis for a public library system, an arm of state government, to require consent to direct deposit for all incoming employees.

It is important to note that for those already employed at a library, consent must be obtained and cannot be tied to maintaining employment. Put another way, it would be improper for an employer to inform one who is already employed that continued employment will be conditioned on consent to direct deposit.

There are methods an employer could utilize to give current employees an incentive to consent to direct deposit. For example, Georgia's State Accounting Office has promulgated the following policy for employees who do not enroll in direct deposit:

Failure of an employee hired prior to May 1, 2010 to enroll in Direct Deposit will not affect the employee's employment. However, beginning July 1, 2013, all paper checks will be mailed/distributed directly to the employee from the employing agency on the employee's designated payday and will be dated the date of the employee's pay

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date. No post dated paper checks will be mailed prior to the designated payday. The employee is advised that the State assumes no responsibility for the delay in receiving a paper check via the United States mail or its equivalent. Should a paper check have to be reissued due to a lost check, the employee may have to wait up to seven days before a replacement check can be issued and mailed.

The result of this policy may be that an employee will likely not receive his or her payment as promptly as those who use direct deposit, and may not receive it as promptly as the prior custom with paper checks.

Consent for payment via direct deposit should be in writing and maintained in the employee's human resources file. In order to facilitate the electronic funds transfer, the employer must obtain banking information from the employee. The employee's agreement to direct deposit can be included in that information collection form. Sample language for an employee consent is as follows:

I hereby authorize Cody County Library System, hereinafter called Library, to initiate credit entries and to initiate, if necessary, debit entries and adjustments for any credit entries in error to my Checking Account indicated above and the Depository named above, hereinafter called Depository, to credit and debit the same to such account. This authority is to remain in full force and effect until Library has received written notification from me of its termination in such time and in such manner as to afford Library and Depository a reasonable opportunity to act on it.

The benefits of direct deposit to a library as an employer are numerous. Most important is the financial savings realized by cutting out the cost of producing checks and for postage in situations where checks are mailed to employees. There is a time savings as well: there is no need to maintain a distribution process for checks, and payroll departments are not asked to duplicate work such as when a check is lost. In the zeal to reap these benefits, an employer must not overlook legal requirements related to this method of payment. In Georgia, consent is required.

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Obtaining and documenting this consent is a prudent way to avoid challenges in the future.

### **[d] Deductions from Pay**

Some states have laws prohibiting an employer from deducting money owed from an employee's paycheck. Georgia does not. Federal law provides, however, that employers are prohibited from paying below the statutory "minimum wage."

The Fair Labor Standards Act (FLSA) is a remedial statute designed to "eliminate . . . substandard labor conditions" in the United States. *Powell v. United States Cartridge Co.*, 339 U.S. 497, 510 (1950). It was enacted to protect workers who lack sufficient bargaining power to secure a subsistence wage. *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 739-40 (1981); *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 708 (1945). The FLSA requires that employers pay employees no less than the hourly minimum wage, which is currently \$7.25 per hour. The minimum wage must be received "free and clear" of improper deductions. 29 C.F.R. § 531.35; *Arriaga v. Florida Pacific Farms, L.L.C.*, 305 F.3d 1228, 1241 (11th Cir. 2002) ("The FLSA prevents improper deductions from reducing the wages of a worker below the minimum wage. . . .").

An exception that has been judicially recognized is repayment to the employer of amounts misappropriated by the employee by means of paycheck deductions, even where they reduce the net pay to the employee below minimum wage. *Mayhue's Super Liquor Stores, Inc. v. Hodgson*, 464 F.2d 1196 (5th Cir. 1972). In such cases the employee has actually taken the money free and clear and had the use of it. "In such a case there would be no violation of the 'Act' because the employee has taken more than the amount of his wage and the return could in no

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way reduce his wage below the minimum.” *Id.* at 1198. The Act was not intended to protect employees against return of amounts wrongfully taken. Likewise, courts have approved payroll deductions for salary advances given to employees even if the deduction brings the amount paid below minimum wage. However, there is no authority for a making a deduction to collect a debt if the deduction brings the employee’s wage below the statutory minimum.

Consider an employee who earns \$8.00 per hour and owes fines to the library in the amount of \$100.00. An 80 hour pay period would result in a gross amount of \$640.00. If the library deducts the full \$100 owed from this paycheck, the gross amount is reduced to \$540.00, which equates to an hourly rate of \$6.75 per hour, below the statutory minimum. The library could, however, deduct \$60 from the paycheck and not violate the minimum wage law. It could then deduct \$40 from the following paycheck and remain within the statutorily mandated minimum wage.

If the library is considering taking this action, it would be a good idea to draft a policy to include in the employee handbook. Also, it is important to enforce the policy in a uniform manner as to all employees.

### **§ 1.26 Employee Leave**

#### **[a] As an Accommodation**

Allowing an employee to take leave is a recognized accommodation required by the Americans with Disabilities Act (ADA). 42 U.S.C. § 12101 *et seq.* As with any other accommodation, the goal of providing leave as an accommodation is to afford employees with disabilities equal employment opportunities.

A request for leave for reasons related to a disability when the leave falls within the employer’s existing leave policy should be treated same as requests for

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leave based on reasons unrelated to a disability. Even if an employer does not offer leave as an employee benefit, the employee is not eligible for leave under the employer's policy, or the employee has exhausted the leave the employer provides as a benefit (including leave exhausted under a workers' compensation program, or the FMLA or similar state or local laws), an employer must consider providing leave to an employee with a disability as a reasonable accommodation.

Reasonable accommodation does not require an employer to provide paid leave beyond what it provides as part of its paid leave policy. Also, as is the case with all other requests for accommodation, an employer can deny requests for leave (even unpaid) when it can show that providing the accommodation would impose an undue hardship on its operations or finances.

As a general rule, the individual with a disability must inform the employer that an accommodation is needed. When the basis of a leave request is a medical condition, the employer must treat it as a request for a reasonable accommodation under the ADA. Importantly, if the leave request can be addressed by an employer's leave program, the FMLA (or a similar state or local law), or the workers' compensation program, the employer is permitted to provide leave under those programs. If, however, the leave cannot be granted under any other program, then an employer should promptly engage in an "interactive process" in order to enable the employer to obtain relevant information to determine the feasibility of providing the leave as a reasonable accommodation without causing an undue hardship.

The information needed by the employer will vary from one situation to another. In some cases, the disability will be obvious; in other instances the employer may need additional information to confirm that the condition is a

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disability under the ADA. Most of the focus, however, will be on the following issues: (1) the specific reason(s) the employee needs leave (for example, surgery and recuperation, adjustment to a new medication regimen, training of a new service animal, or doctor visits or physical therapy); (2) whether the leave will be a block of time (for example, three weeks or four months), or intermittent (for example, one day per week, six days per month, occasional days throughout the year); and (3) when the need for leave will end.

An employer is free to obtain information from the employee's health care provider (with the employee's permission) to confirm or to elaborate on information that the employee has provided. Employers may also ask the health care provider to respond to questions designed to enable the employer to understand the need for leave, the amount and type of leave required, and whether reasonable accommodations other than (or in addition to) leave may be effective for the employee (perhaps resulting in the need for less leave).

### **[b] Family & Medical Leave Act**

The Family and Medical Leave Act (FMLA) 29 U.S.C. § 2601 *et seq.*, provides that covered employers must provide eligible employees with up to twelve weeks of unpaid leave during any twelve-month period for the birth, adoption, or foster care placement of a child; to care for a parent, son or daughter, or spouse with a serious health condition; and for an employee's own serious health condition. In addition to employers from the private sector with 50 or more employees, the FMLA applies to public agencies regardless of the number of employees. To be eligible to take FMLA leave, an employee must have worked for a covered employer: (1) for at least twelve months, (2) for at least 1,250 hours during the twelve-month period immediately

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preceding the date leave is taken, and (3) at a worksite where the employer employs at least 50 employees within 75 miles (or any worksite of a public employer).

FMLA leave is generally unpaid. An employee with accrued paid leave, however, may elect to substitute the paid leave for any portion of the twelve-week FMLA leave. Also, the employer may require the employee to substitute accrued paid leave for what would otherwise be FMLA leave. Accrued compensatory time off in lieu of overtime (as allowed under the Fair Labor Standards Act) is not a form of accrued personal leave. Therefore, public employers may not require employees to substitute comp time for unpaid FMLA leave. An employee may elect to use his or her comp time, but any absence utilizing comp time does not count toward the employee's FMLA entitlement.

An employer is required to maintain group health insurance coverage for an eligible employee on FMLA leave on the same terms and conditions as if the employee had continued to work. An employee may opt not to retain health benefits during FMLA leave, but an employer may recover any premium payments missed by an employee on unpaid leave who maintains health coverage.

### **[i] Designation**

It is always the employer's obligation to designate qualifying leave, paid or unpaid, under the FMLA. 29 C.F.R. § 825.301(a). Regardless of whether the employee requests that an absence be counted as FMLA leave -- or even if the employee requests that the leave not be counted toward his or her FMLA entitlement -- the employer may designate a qualifying absence as FMLA leave. An employer must notify an employee whether leave will be designated as FMLA leave within five business days of learning that the leave is being taken for an FMLA-



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qualifying reason, absent extenuating circumstances. The designation notice must also state whether paid leave will be substituted for unpaid FMLA leave and whether the employer will require the employee to provide a fitness-for-duty certification to return to work.

### **[ii] Medical Certification**

In order to ascertain whether the leave qualifies under the FMLA, an employer has a right to request that an employee provide medical certification containing sufficient medical facts to establish that a serious health condition exists. But, an employer must be careful in seeking additional information from an employee often absent due to health issues. The employer may not ask the employee (or co-workers or family members) directly about the health problems that the employee is experiencing. When the employee requests to take sick leave, the employer should follow up with questions to ascertain whether the reason for the sick leave: (1) meets the employer's policy for use of sick leave, and (2) is a qualifying basis for FMLA leave. Note, however, that this procedure should be applied consistently to all employees who take sick leave or FMLA leave. Singling out a particular employee to add a requirement for taking leave that others are not subjected to is tantamount to discrimination.

### **[iii] Status Reports**

When an employee is on FMLA leave, the employer may require periodic reports on that employee's status and intent to return to work. The employer's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave

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situation. 29 C.F.R. § 825.309(a). Such requests can be required at only reasonable intervals, which, in most cases, is 30 days. 29 C.F.R. § 825.308.

### **[iv] Fitness-for-Duty Certification**

As a condition of restoring an employee whose FMLA leave was due to the employee's own serious health condition that made the employee unable to perform his or her job, an employer may have a uniformly-applied policy or practice that requires the employee to obtain and present certification from the employee's health care provider that the employee is able to resume work. The employee has the same obligations to participate and cooperate in the fitness-for-duty certification process as in the initial certification process and is responsible for any associated costs.

An employer may require a fitness-for-duty certification only with regard to the particular health condition that caused the need for FMLA leave. The certification from the employee's health care provider must certify that the employee is able to resume work. The employer must provide notice of the requirement to provide a fitness-for-duty certification with the designation notice. If the employer has provided a list of the essential functions of the employee's job by no later than with the designation notice, an employer also may require that the certification address those essential functions.

The employer may delay the employee's return to work until he or she submits a required fitness-for-duty certification unless the employer has failed to provide the notice required. If the employer has properly provided notice, an employee who fails to submit a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA.

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Upon receipt of a fitness-for-duty certification, the employer may contact the employee's health care provider for purposes of clarifying and authenticating the certification. Clarification may be requested only for the serious health condition for which FMLA leave was taken. The employer may not delay the employee's return to work while contact with the health care provider is being made. Furthermore, no second or third opinions may be required on a fitness-for-duty certification.

An employer is not entitled to a fitness-for-duty certification for each absence taken on an intermittent leave schedule. If reasonable safety concerns exist, however, with regard to the employee's ability to perform his or her duties because of the serious health condition for which the employee took leave, the employer is entitled to require a fitness-for-duty certification for such absences up to once every 30 days. "Reasonable safety concerns" means a reasonable belief of significant risk of harm to the employee or others. The employer may not terminate the employment of the employee while awaiting such fitness-for-duty certification for an intermittent or reduced schedule leave absence.

### **[v] Pay from Worker's Comp/Short Term Disability Insurance**

An employee in need of FMLA leave for his or her own serious health condition may be eligible for paid benefits under a workers' compensation or temporary disability plan. If the employee is receiving such payments, the employer may not require, and the employee may not elect, substitution of accrued paid leave.

### **§ 1.27 Personnel Policies (Model Policies located in Appendix A)**

A body of written policies addressing commonly recurring personnel issues is an excellent tool for managers to use in achieving effective and productive working environments. An employer's policies are its governing rules and should be drafted

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with an eye toward achieving the organization's overall mission. In the context of a public library, the governing board will enact numerous categories of policies, e.g., service policies, facility use policies, patron conduct policies, financial/budgetary policies, and personnel policies. Personnel policies are in the nature of internal operating procedures and should be maintained separately from the organization's other types of policies.

Personnel policies explain the expectations for employees and describe what they, in turn, can anticipate from their employer. Personnel policies should describe the organization's legal obligations as an employer and employees' rights.

While many policies may be simply implied customs or oral recitations of how things are done, current best practices emphasize having written policies to ensure the effective and efficient running of libraries.

### **C. Termination/Resignation**

#### **§ 1.41 Workers' Comp & Unemployment Insurance Benefits**

The Georgia General Assembly has declared that it is the public policy of this state that "economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state. . . . [Therefore] the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own." O.C.G.A. § 34-8-2. As an employer, a public library is required by law to make contributions to the fund, which are held in trust by the Commissioner of Labor. Monies from the fund are used to pay unemployment benefits to eligible employees.

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The reason for an employee's termination factors into whether the employee will be eligible to receive unemployment benefits. If an employee is discharged due to failure to obey orders, rules or instructions, or failure to perform duties, the employee will be disqualified from drawing unemployment. O.C.G.A. § 34-8-194(2)(A). Note, however, that the burden of proof is on the employer to establish some fault on the part of the employee. Also, if the employee is terminated for intentional misconduct while on the job that results in physical assault or property damage in the amount of \$2,000 or more, he or she will not be eligible for unemployment benefits. O.C.G.A. § 34-8-194(2)(A)(ii)(I). And finally, an employee fired for intentional misconduct that results in theft of property valued at more than \$100 is not eligible for unemployment payments. O.C.G.A. § 34-8-194(2A)(ii)(II).

When a former employee files a claim for unemployment benefits, the former employer is sent a notice of claim and has the opportunity to attend a predetermination interview or submit written information. It is beneficial for the employer to provide the claim examiner with any written documentation supporting the termination such as warnings, reprimands, performance evaluations, and attendance records.

According to Georgia's Department of Labor, an individual who quits a job may still be eligible for unemployment benefits if he or she quit for a "good work-related reason." The Georgia Department of Labor has a rule that precisely defines under what circumstances an employee who voluntarily quits may be eligible for unemployment benefits. The rule provides:

- (1) An employee who voluntarily quits is to be disqualified unless he/she can show that the employer had changed the terms and conditions of work in a manner that the employee, applying the

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judgment of a reasonable person, would not be expected to continue that employment. Factors which the Commissioner shall consider in making this determination may include, among others, the following:

(a) Whether the employee was downgraded for reasons other than the fault of the claimant;

(b) Whether the employee had undergone harassment on the job of a substantial nature which would induce a reasonable person to quit in order to seek other employment;

(c) Whether the hiring contract had otherwise been broken in a material way;

(d) An economic downgrade based on the employer's inability to continue the former salary will not be considered as a good cause to quit if the reduction in salary is not a substantial reduction below a reasonable rate for that industry or trade. However, a seasonal or temporary reduction in pay or work hours does not constitute good cause for quitting; or

(e) Whether the employee's health was placed in jeopardy by conditions on the job. There must be some clear connection between the health problem and the performance of the job, and professional medical advice is required unless the reason would be obvious that harm to the employee would result from continued employment. This includes such obvious things as broken limbs, violent reactions such as allergies due to the environment on the job and similar circumstances. Provided, however, the employee must discuss the matter with the employer to seek a solution by another assignment or other changes that would be appropriate to relieve the medical problem before the employee can show good work-connected cause for quitting.

(2) Disqualification is not required if an employee quits because the rules of the employer prove to be unreasonable as related to proper job performance.

(3) In situations in which it is not clear whether a quit or a discharge occurred to cause the separation, the burden of persuasion shall be on the employer to show that a quit rather than a discharge occurred. If the employer meets this burden of persuasion, then the burden of proof is then placed on the claimant to show that the quit was for good cause connected with the work. If the employer fails to meet this burden of persuasion, the separation shall be treated as a discharge and the burden of proof of just discharge shall be on the employer.

(4) When an individual accepts a separation from employment due to lack of work, pursuant to a labor management contract or agreement, or pursuant to an established employer plan, program, policy, layoff, or recall, the Commissioner will determine eligibility based on the individual circumstances of the case. In such cases, to show that the individual quit for good cause connected with the most recent work the facts must demonstrate at minimum:

(a) That the individual was advised of an actual impending layoff with a date certain, and

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(b) That the effective date of the layoff was no more than six (6) months after the announcement date.

Ga. Dept. of Labor Rule 300-2-9-.05

Based upon this rule, an employee who develops an allergy, for example, to something that is necessarily encountered in the workplace would be eligible for unemployment benefits even if he or she voluntarily quits the job. The employee would likely be required by the Department of Labor to support her claim of allergy with medical opinions. Assuming, however, the employee has a legitimate medical condition, the employer would be unable to avoid paying the unemployment benefits.

### **§ 1.42 Termination Interview**

The face-to-face discussion during which an employee is told he or she is being terminated is not comfortable for any participant. The following tips may make the process more manageable and help protect the employer from legal claims later on.

#### **DO**

- Terminate in the first ten minutes of the conversation. Avoid a long build-up to soften the blow because this will often only confuse and cloud the message.
- Focus your discussion on performance related issues.
- Be clear and answer questions. Make sure the employee understands that he or she is being terminated. Once you have explained the situation, let the employee ask questions.
- Let the employee respond. Acknowledge any valid points and tell the employee that you appreciate the input and candidness.
- Ask the employee if he or she understands the reasons for the termination.
- Specify clearly why the employee is being terminated and the effective date and time of the termination.
- Inform the employee of any rights or entitlements that he or she may have.
- Ensure the return of any property that belongs to the employer.
- Cover all areas of security, including computer passwords, access to company property or data, and physical security of the job site and other employees.
- Arrange for the employee to remove personal effects in private.
- End on a positive note. Thank the employee for all contributions and wish the employee well in the future. When the meeting is over, stand up and shake hands.

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- Document the termination conference.
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### DO NOT

- Do not give employees false hope and say you'll help them find a job.
- Do not say, "I'm sure you're not going to have any trouble."
- Do not pass the buck and say this firing was not your idea.
- Do not give platitudes and say, "You'll feel better when you sleep on it."
- Do not say, "I feel really bad about this."
- Do not get defensive.
- Do not interrupt, contradict, or try to defend yourself or the organization. Arguing will only create resentment and frustration on the part of the employee.
- Do not assess blame or make apologies. There is no reason to blame the employee or the organization for the termination. Just explain that the organization's needs do not match the employee's particular skills.
- Do not apologize; you can express regret that the employment relationship did not work out, but do not apologize.
- Do not debate or argue with the employee.
- Do not make value judgments or attempt to analyze the reasons for dismissal. Cite the reasons briefly and factually.
- Do not take responsibility for the failure. You may want to simply express regret that the opportunity did not work out.
- Do not use words like "incompetent" or "dishonest." Focus on performance.
- Do not offer advice.
- Do not discuss the termination with anyone other than the employee and those directly involved.

### § 1.43 Release of Claims

When terminating an employee, the employer is free to seek a release of liability by entering into a severance agreement with the discharged employee. In this type of an arrangement, an employee agrees to take something of value to which he is not otherwise entitled — additional compensation, benefits, or other "in-kind" consideration — in exchange for agreeing not to sue the employer.

Even in an at-will employment state and having been subject to a completely legal termination, an unhappy employee may sue the employer. If that happens, an organization that is completely in the right will end up spending money to defend the meritless claim. A severance agreement that includes a full release of claims is



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a method by which an employer can pay out an agreed-upon sum in exchange for fully and finally concluding its relationship with the employee.

Whether a severance agreement is a beneficial step for an employer depends on a variety of factors. First, the following risk questions should be considered:

- Is the employee in a protected category under a discrimination law?
- Is it likely that the employee will be replaced by someone not in the same protected category?
- Has the employee recently engaged in protected activity such as taking leave under the FMLA, filing a workers' compensation claim, or blowing the whistle on the employer?
- Are there any indicia of an employment contract?

If the answer to any of these questions is “yes”, the risk of a lawsuit should be weighed against the expense of a severance package.

Next, the level of fault on the part of the employee and how well-positioned the employer is to prove fault should to be taken into account. For example, it is less beneficial to the employer to offer a severance package when the employer can readily prove that the discharge occurred because the employee was caught stealing, engaged in insubordination or workplace violence, or committed some form of harassment. This is so because an employer poised to defend a wrongful termination claim with such evidence will likely achieve a dismissal of the claim very early in the litigation.

Also, employers should assess the danger of establishing a precedent of offering severance packages. If it becomes known that employees who engage in egregious behavior are essentially “paid off” on their way out the door, overall workplace conduct and morale are likely to be affected. Indeed, an employer can even appear to be complicit in the employee’s bad behavior in such situations.

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Remember that employers cannot force a discharged employee to sign a severance agreement. The employer may merely make the offer. And, offering a severance agreement does not come without risk. It is possible that an employee who had never thought about suing may see the list of claims in the release and begin wonder if any apply to him. The employee may interpret the employer's efforts as a signal that he does, in fact, have a valid claim.

Finally, in order for a severance agreement to be enforceable, the discharged employee must be given a reasonable amount of time to consider it. For example, to obtain an enforceable release of age discrimination claims, federal law requires the employer allow the employee up to 45 days to consider the agreement. 29 U.S.C. § 626(f)(1)(F)(ii).

Ultimately, whether an organization offers a discharged employee a severance agreement is judgment call that should be made on a case-by-case basis. Weighing the risks and benefits of severance agreements outlined above is the appropriate starting point for any employer concerned about claims that may be raised by disgruntled former employees.

### **§ 1.44 Post-termination References**

Terminated employees may use their former library supervisors as references in seeking other employment. Library administrators need to plan in advance how to handle such requests. Obviously, an employee who was terminated would not ordinarily be the recipient of a glowing recommendation. However, library managers should be cautious in providing detailed information about the employee to another potential employer. It may be wise to limit the disclosure to: the dates of employment, description of the duties performed, and salary information.

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Furthermore, it is advisable to verify that the former employee is aware of and does not object to the former employer responding to the reference request before giving out any information.

### E. Additional Resources

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Milam-Perez, Lisa. “Industry Perspective—Court Dockets See Swelling Numbers of Independent Contractor Misclassification Suits.” *Wolters Kluwer Employment Law Daily*. 18 July 2013, 2013 WL 3754314.

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United States Department of Labor. “Frequently Asked Questions and Answers about the Revisions to the Family and Medical Leave Act.” Accessed March 27, 2018 at <http://www.dol.gov/whd/fmla/finalrule/NonMilitaryFAQs.htm>.

### **Personnel Policies**

Larson, J.C. & Totten, H.L. (2008). *The Public Library Policy Writer*. New York, NY: Neal-Schuman.



## CHAPTER 2: PATRONS

### A. Patron Rights

#### § 2.01 [1] Access

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### A. Patron Rights

#### § 2.01 Access

Public libraries are governmental entities open to all, and all are welcome. Patrons are the reason public libraries exist. Unfortunately, not all patrons are respectful of library employees and other members of the public. And some patrons are simply unaware of appropriate behavior in a library setting. Therefore, to promote an environment that is safe and inviting to all, a public library must develop policies and practices about how patrons are required to present themselves and behave while on library premises and what duties the library, as a governmental actor, has with respect to patron demands. In creating and enforcing rules and regulations involving patron use of the library, administrators and trustees must understand the legal rights members of the public have in relation to the public library.

#### **[a] First Amendment: Right to Receive Information**

Since 1943, the United States Supreme Court has recognized that the “freedom of speech” component of the First Amendment to the United States Constitution includes the freedom to receive speech in addition to the freedom to speak. *Martin v. City of Struthers*, 319 U.S. 141 (1943). In 1965, the Court interpreted the First Amendment even more broadly to encompass “the right to read . . . and freedom of inquiry.” *Griswold v. Connecticut*, 381 U.S. 479 (1965). Four years later the Court reiterated that the First Amendment prohibits the government from denying individuals the right to receive information and ideas. *Stanley v. Georgia*, 394 U.S. 557 (1969).



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In 1992, a Federal Court of Appeals held that under First Amendment jurisprudence, individuals have the right to some level of access to a public library, which the court defined as “the quintessential locus of the receipt of information.”

*Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242 (1992).

Therefore, any library rule, regulation, policy, or ad hoc decision that results in curtailing a person’s access to information within a public library implicates the First Amendment.

As with other First Amendment rights, the right to receive information is not absolute; there are circumstances in which the government may limit the right. The extent to which the right to receive information may be limited through denial of access to a public library depends on the nature of the public library as a forum.

In 1983, the Supreme Court adopted the “forum” analysis to determine whether a given curtailment of a First Amendment right is valid or whether it illegally infringes on the particular right. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983). The forum with the highest level of protection is the “public forum;” it includes streets and parks and public sidewalks which “have immemorially been held in trust for the use of the public . . . for the purposes of assembly, communicating thoughts between citizens and discussing public questions.” *Id.* at 45. On the other end of the spectrum is the nonpublic forum, which is government property that has not traditionally or by designation been used as a place for public communication. *Id.* at 46. The non-public forum receives the least protection; courts reason that the government, just like any private property owner, has a right to control its property when that property is not a place where expressive activity traditionally occurs. *Cornelius v. NAACP Legal Defense & Educ.*

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*Fund, Inc.*, 473 U.S. 788, 799-800 (1995). Examples of non-public fora are military bases, jails, and public schools.

In between the public and nonpublic fora lies the “limited public forum,” which is property the government has opened for use by the public for the exercise of specific expressive activity. Courts have consistently placed public libraries in this category. A public library is governmental property that has been designated as a place for specific types of expressive activity. The Supreme Court has defined the specific use of a public library as “a place dedicated to quiet, to knowledge, and to beauty.” *Brown v. Louisiana*, 383 U.S. 131, 142 (1966). More recently, the Court explained, “Public libraries pursue the worthy missions of facilitating learning and cultural enrichment.” *United States v. Am. Library Ass’n, Inc.*, 539 U.S. 194, 203 (2003).

As a limited 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. Restrictions that do not limit the First Amendment activities that have been specifically permitted in the forum need only be “reasonable and not an effort to suppress expression merely because public officials oppose the speakers view.” *Perry*, 460 U.S. at 46. In other words, a library rule that prohibits talking on a cell phone while in the library does not directly affect a patron’s right to receive information the library has been designated to provide; rather it is a rule curtailing the right to talk out loud to another person through the phone. Therefore, to withstand constitutional scrutiny, the rule must be reasonable and viewpoint neutral. Unquestionably, a rule prohibiting patrons from carrying on phone conversations inside a library is a reasonable effort by library officials to

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protect the ability to engage in “quiet contemplation” that courts have recognized as a primary purpose of public libraries. Furthermore, the rule is viewpoint neutral in that it prohibits all personal phone conversations, not just those on a specific topic. Therefore, a challenge to the no-cell-phone-use rule would likely be unsuccessful.

On the other hand, a rule that directly limits the First Amendment activities for which the forum was established receives more scrutiny. The Supreme Court has held that time, place, or manner regulations that limit the permitted First Amendment activities within a designated public forum are legal only if they are “narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of information.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). In the context of public libraries, courts generally place hygiene and appearance restrictions in this category. This is so because an individual peacefully engaged in the First Amendment activities for which the library was established may violate a hygiene or appearance rule and therefore be expelled from the premises, which prevents his or her continued exercise of those rights.

Application of the more stringent test to time, place, or manner restrictions first requires consideration of what “significant interest” of the government is to be achieved by the rule. In public library cases, courts readily recognize that library officials have a significant interest in ensuring that all patrons can use library facilities to the maximum extent possible during the time the library is open. *Kreimer*, 958 F.2d 1242, 1264. Therefore, policies written and enforced in order to achieve this goal will easily meet the “significant government interest” portion of the test.

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The second step in applying the higher level of scrutiny to a rule limiting an individual's right to exercise First Amendment rights consistent with the purposes of a limited public forum is to determine whether the rule is "narrowly tailored." The Supreme Court has explained that the "narrowly tailored" requirement does not call for the "least-restrictive or least-intrusive means" of furthering the government's interest. *Ward*, 491 U.S. at 798. Instead, narrow tailoring is achieved "so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Id.* at 799.

Finally, courts applying the third prong of the higher scrutiny test—that the rule in question leaves open alternative channels for communication—have determined that when a hygiene or appearance rule requires an individual to leave a limited public forum, the fact that he or she can be readmitted once in compliance with the rule is all that is required. *Kreimer*, 958 F.2d 1242, 1264. In other words, if a public library requires a barefooted patron to leave the premises, that same patron is free to resume his First Amendment activities in the library once he dons a pair of shoes. *Neinast v. Bd. of Trs. of Columbus Metro. Library*, 346 F.3d 585, 595 (6th Cir. 2003).

An additional First Amendment attack that may be raised against a policy that in some way limits access to a public library is a vagueness argument. When a rule does not properly articulate what activity is prohibited, it may be struck down as vague. Generally, a successful vagueness challenge involves a restriction that imbues government officials with undue discretion to determine whether a given activity violates the rule. An example in the public library context is a policy stating that a patron can be denied access to the library if her or her appearance is

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“objectionable.” *Armstrong v. Dist. of Columbia Pub. Library*, 154 F.Supp.2d 67 (D. D.C. 2001). This policy was struck down by a federal court because it contained neither a legal standard nor a specific definition for “objectionable.” *Id.* at 78. The court was concerned about the inconsistency resulting from ad hoc decision making by library guards, employees, and supervisors as well as the public’s inability to discern what was required to gain access to the library. Therefore, public library directors and trustees must strive to make all policies explicit with objective measures that will allow anyone to understand what is prohibited.

### **[b] Fourteenth Amendment: Due Process of Law**

Before the government may deprive an individual of a property or liberty interest, it must afford due process of law. Public libraries in Georgia are governmental entities and are thus required to provide due process when a patron’s property or liberty interest is affected by library action. As set forth above, courts have recognized as a liberty interest an individual’s First Amendment right of access to a public library. Therefore, due process must be provided before a library denies or interferes with a patron’s access to the library or some form of information within (i.e., public access computers).

The Supreme Court has held that at a minimum, due process requires notice of the infraction and a right to defend oneself. *Goss v. Lopez*, 419 U.S. 565, 581 (1975). An example of a public library case where due process was found to be lacking is a case from a federal court in North Carolina. *Miller v. Nw. Region Library Bd.*, 348 F.Supp.2d 563 (M.D. N.C. 2004). In that case, a patron was permanently banned from using any library computer to access the internet after a librarian witnessed a pop-up containing nudity on the monitor being used by the

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patron. The ban was imposed immediately after the single incident was witnessed, and the patron was given no avenue to appeal or to even explain how the image appeared on the screen.

In another scenario where a library patron challenged the denial of access to the public library on due process grounds, a court found the library provided proper procedural safeguards. *Lu v. Hulme*, 133 F.Supp.3d 312 (D. Mass. 2015). In this case, the patron sought to enter the Boston Public Library with a shopping cart that contained foul smelling items. Because the library has a written policy prohibiting wheeled carts and another policy prohibiting items of offensive odor, the library's security guard refused the patron entry. At the patron's request, the head of library security met with him outside of the library to explain the rule; the patron was told that he was welcome to come into the library without the cart. The security chief listened to the patron's explanation of why he could not abandon his possessions and alternatively, suggested that he transfer the possessions to a more enclosed container such as a suitcase, which he could bring into the library. The court rejected the patron's due process challenge, finding that the explanations of the policies offered by the security guard and the supervisor were sufficient notice and the fact that the patron was allowed to explain why he wished to bring the cart into the library was an exercise of the patron's right to be heard. It was important to the court in this case that the library was not instituting a permanent ban as did the North Carolina library. Rather, the patron was free to come into the library without the cart of foul-smelling items.

### [c] Americans with Disabilities Act

The Americans with Disabilities Act (“ADA”) governs access to public services. Title II of the ADA prohibits public providers of programs and services from (a) discriminating against “a qualified individual” with a disability” and (b) excluding such individual from participation in or denial of the benefits of services, programs, or activities. 42 U.S.C. § 12131 *et. seq.*

#### [i] Technical Requirements

Strict compliance with ADA technical requirements is compulsory. There are a number of resources offering guidance in this area. First and most comprehensive is the ADA’s *Title II Technical Assistance Manual*, accessed April 1, 2018 at <http://www.ada.gov/taman2.html>. For library-specific guidance refer to the American Library Association’s *ADA and Libraries*, accessed on April 1, 2018 at <http://www.ala.org/tools/ada-and-libraries>. Another source summarizing areas of attention for ADA compliance within a public library is provided by *Access Advocates*, accessed April 1, 2018 at <http://www.accessadvocates.com/ada-compliance-library/#.Ve4Hv5WFNMs>, which includes the following twelve areas that should be reviewed in evaluating ADA accessibility compliance:

- Parking Lot
- Signage
- Path and Doors
- Elevators and Stairs
- Floors
- Lighting
- Public Access Catalogs and Computer Stations
- Furniture
- Periodicals and Stacks
- Checkout
- Reference or Help Desk
- Restrooms

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### **[ii] Accommodations**

In addition to the standard accessibility requirements to which the library must always adhere, Title II of the ADA, also requires public service providers such as a public library to make accommodations for certain individuals. Title II defines a “qualified individual with a disability” as “an individual with a disability who, with or without reasonable modifications . . . or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).

The Department of Justice (DOJ) has promulgated regulations implementing Title II’s prohibition against discrimination, one of which provides, “[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7).

### **[A] Auxiliary Aids**

An example of an accommodation that may be required of a public library in order to remove barriers to the acquisition of information by visually impaired individuals would be the provision of auxiliary aids and services including readers, taped texts, and Braille materials. However, the ADA’s “reasonable modification” principle does not require a public entity to employ any and all means to make services accessible to persons with disabilities. Indeed, the United States Supreme stated, “It requires only ‘reasonable modifications’ that would not fundamentally

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alter the nature of the service provided . . . [or] impose an undue financial or administrative burden.”). *Tennessee v. Lane*, 541 U.S. 509, 531-32 (2004).

### **[B] Service Animals**

Another request that has become common in public libraries is that a patron be allowed to bring his or her “service animal” into the library. On its face, this request appears reasonable. However, the DOJ has provided guidance specifically defining a service animal as one who is trained to take a specific action when needed to assist a person with a disability. United States Department of Justice, Civil Rights Division, Disability Rights Section, Frequently Asked Questions about Service Animals and the ADA, accessed on April 1, 2018 at [http://www.ada.gov/regs2010/service\\_animal\\_qa.html](http://www.ada.gov/regs2010/service_animal_qa.html). According to the DOJ, “emotional support, therapy, comfort, or companion animals” are not service animals under the ADA. This is so even if a doctor has prescribed accompaniment by the animal for mental health reasons. This is not to say, however, that there is no circumstance in which an animal that provides emotional comfort does not arise to the level of “service animal.” For example, a library patron who suffers from an anxiety disorder may seek permission to bring his dog into the library. According to the DOJ, if that dog has been trained to sense that an anxiety attack is about to happen and take specific action to help avoid the attack or lessen its impact, it would qualify as a service animal. That the patron derives comfort from the mere presence of the dog, however, is not sufficient to qualify it as a service animal.

### **[C] Other Requests**

Requests for accommodation should be addressed on a case-by-case basis. Even if the requested accommodation appears outlandish, a public library is obliged

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to take seriously its obligations under the ADA and evaluate the factual scenario involved in every request. For example, consider a public library that has been requested to provide a patron who has Attention Deficit-Hyperactivity Disorder with a private room in which to read to allow her to concentrate. Assuming the patron meets the ADA's definition of "qualified individual," a public library has a legal obligation to make services available to that person through a reasonable accommodation. But, the request to provide a private reading room is not reasonable. First, it would likely impose an undue financial burden on a public library to provide it. Second, private, quiet space for reading is not guaranteed to any library patron, whether disabled or not. The existence of a disability does not entitle the patron to more or better services than provided to the general public.

### **[iii] Evaluating Applicability**

Not every health condition or impairment is a disability within the purview of the ADA. *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 565 (1999). Instead, only those impairments which "substantially limit" an individual's ability to perform a major life activity fall within gambit of the ADA. *Id.* Courts have held that temporary or transitory impairments are not disabilities. *Matthews v. Vill. Ctr. Cmty. Dev. Dist.*, 5:05-CV-344-OC-10GRJ, 2006 WL 3422416 (M.D. Fla. Nov. 28, 2006); *Bray v. Nat'l Servs. Indus., Inc.*, 209 F. Supp. 2d 1343, 1351 (M.D. Ga. 2001). Likewise, regulatory authority clearly indicates that "temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually not disabilities." 29 C.F.R. § 1630.2(j). Therefore, if a library patron's condition is a temporary or transitory event, that patron is not covered by the ADA.

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Even if a patron's condition is permanent, he or she is covered by the ADA only if the condition "substantially limits" the ability to perform a major life activity. The United States Supreme Court has defined "major life activities" to include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working and reproducing. *Bragdon v. Abbott*, 524 U.S. 624 (1998). While it would be hard for library management to know the extent to which patron's condition affects his ability to perform major life activities, simple observations can go a long way in making this determination.

If it appears that the patron's impairment does substantially limit a major life activity, he would be considered "disabled" under the ADA. However, this patron would not be a "qualified individual" if his condition poses a direct threat to the safe operation of the library or if the individual "poses a direct threat to the health or safety of others." 28 C.F.R pt. 35, app. A.

Careful application of the ADA's requirements to specific facts will always be necessary to determine a public library's obligations. Establishing a uniform process for receiving and assessing a request for an accommodation will ensure that the library gives due consideration to all individuals who claim entitlement to an accommodation as well as consistency in responding.

### **§2.02 Confidentiality**

#### **[a] Circulation Records**

In 1987, Georgia enacted a statute making public library circulation records confidential. O.C.G.A. § 24-12-30(a). The statute provides:

Circulation and similar records of a library which identify the user of library materials shall not be public records but shall be confidential and shall not be disclosed except:

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- (1) To members of the library staff in the ordinary course of business;
- (2) Upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward; or
- (3) Upon appropriate court order or subpoena.

A look back at the history of Georgia's and most other states' confidentiality statutes reveals that these laws were enacted in the early 1980s in reaction to law enforcement investigations of what members of the public were reading. While not stated so precisely in the statute itself, the underlying intent of these laws was to prevent revealing information that would allow matching up patron name with patron circulation history. Thus, unless actual circulation, research history, etc. is at issue, the confidentiality statute is not implicated.

Even if records covered by the confidentiality statute are at issue, the first exception contained in the law exempts records disclosed "to members of the library staff in the ordinary course of business." Clearly this allows for library employees to access and share information with each other to accomplish the customary business of the organization.

What about sharing information between library systems? Under a strict reading of this exception, sharing may occur only within the library originating a patron record. However, there are instances where a library entity encompasses multiple counties; for example, Georgia's Subregional Talking Book Centers. A reasonable interpretation of the exception would be to include library staff from the counties encompassed by the local Talking Book Center as staff members of the entity that originated the record. This is particularly true if there is overlap between librarians or board members.

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Assessing the question from a practical standpoint is important. If the intent of sharing patron information is to promote library use and not to provide investigators with information a reasonable person would believe to be private, there is little likelihood of a challenge.

At the end of the day, there is a judgment call involved when library staff members decide what information may be shared. Like so many areas of the law, there is no clear cut answer. But knowing and understanding the intent of the confidentiality statute and remaining consistent with that intent is most important. Then weighing the true risk of violating the confidentiality statute against the benefit sought to be achieved through the sharing of information will direct the decision making.

### **[i] Requests by Family Members—Power of Attorney**

It is not uncommon for librarians to receive inquiries from family members regarding what materials an individual is using at the library. Generally, these requests come from legitimate concern for the well-being of the library user. Nevertheless, the law precludes revealing this information in the absence of written consent.

A power of attorney is a written instrument containing an authorization for one to act as the agent of the principal. Under Georgia law, whatever one may do himself may be done by an agent. O.C.G.A. § 10-6-5. Additionally, there is a Georgia statute that makes a power of attorney durable unless it expressly provides otherwise. O.C.G.A. § 10-6-36. This means that the power of attorney is not terminated by incompetency or incapacity of the principal. A power of attorney may be revoked by the principal at any time.

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To be valid, a power of attorney must be in writing, signed by the grantor, and signed by two adult witnesses. One of the witnesses should be a notary.

A power of attorney may be general or specific. In other words, a general power of attorney conveys to the agent the ability to do any act the principal may do; a specific power of attorney grants the ability to perform a specific act or actions within an express scope. For example, a person may execute a power of attorney to allow his agent to sell a specific piece of property.

If a library staff member is presented with what appears to a valid power of attorney that is general in nature and a request by the agent to review the principal's circulation records, the library should treat this request as if it comes from the principal himself. Therefore, if it is the library's policy to allow a patron to review his own circulation records, that same policy should apply to the agent.

A situation could arise in which the library staff member is uncertain as to the validity of the presented power of attorney. If so, it may be wise to request to make a copy of the document and have it reviewed by the county attorney or the library's retained counsel.

It should be noted that Georgia's statute regarding the confidentiality of library circulation records provides that disclosure of these records is allowed upon "written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward." O.C.G.A. § 24-12-30. Therefore, prior to disclosure of the records upon request of the agent, the library should obtain the agent's written consent as well as a copy of the power of attorney. Maintaining these documents will allow the library to avoid liability in the event the disclosure of the records is challenged by the borrower (principal).

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### **[ii] Requests from Law Enforcement**

Often requests to access library patron records will come from law enforcement either informally or through formal means such as a subpoena or search warrant. Given the language of the statute prohibiting the disclosure of patron records without an appropriate court order or subpoena, informal requests could be problematic for the library. The safest avenue for the library to comply with the statute in the face of requests from law enforcement is to require a court order of some type (which includes subpoenas and search warrants).

In the event the library is presented with a subpoena, the document itself provides for how and when information must be turned over. A search warrant, on the other hand is usually executed by law enforcement immediately upon its presentation. Should library staff have questions about the validity of a warrant, however, a request to consult with counsel will usually be honored.

### **[b] Images of Library Users**

It is common for library staff to take photos and video during library events, including those patrons who are participating. There is no prohibition against taking a photograph or video of a person in a public place—unless the photographer is a registered sex offender and the subject is a minor. O.C.G.A. § 42-1-18(b). Thus, a patron could make no valid complaint against a library employee who takes a picture of the subject in a place where a reasonable person would have no legitimate expectation of privacy.

For discussion of the more complex issue of how a photograph, legally taken, will be utilized, *see* Chapter 3: Children in the Library, Photographing Children at § 3.04.

### **[c] Requests to View Surveillance Video**

It has become commonplace for security cameras to record wide swaths of public activity. Most discussions about placement of surveillance cameras involve a debate about privacy rights versus the need for security and crime deterrence. A less prevalent, but important, concern is the extent of responsibility and property rights of a governmental entity, such as a public library, in the possession of its own security camera footage.

Undoubtedly, recordings made by a library security camera are covered by Georgia's Open Records Act. Public records are defined by the Act as "all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use." O.C.G.A. § 50-18-70(b)(2). Therefore, those recordings would be subject to a request from a member of the public, and a library would be required to turn over the recordings under the same parameters as other documents that fall under the Act.

A more likely scenario facing a library is an on-the-spot request from a patron who has lost her purse. The patron may request immediate access to recent footage from the camera, hoping that the camera will reveal what happened to her property. Legally speaking, there is no requirement for a library to comply at that moment. The timeframe of the Open Records Act, three business days, is the only legal benchmark. O.C.G.A. § 50-18-71(b)(1)(A). On the other hand, there is nothing

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in the law to prevent a library from sharing the contents of the video footage if it chooses to do so. The decision here will likely be based on numerous factors including the complexity of the recording set-up, whether there is ample staff to accommodate the request, etc. Establishing a policy and informing and training staff on how a library opts to respond to such requests will be helpful to library employees who may be faced with distressed and demanding members of the public.

Another factual scenario that may arise at a library is a request to view the security camera recordings by law enforcement. For example, the patron with the missing purse could file a property theft report, and the assigned officer may ask to view the camera footage as part of his investigation. Or the police could suspect a frequent library patron of conducting drug deals in a library. Therefore, the video footage would be relevant in any gathering of evidence.

From a library's standpoint, it is reasonable to view a request from an official law enforcement source as more compulsory than one coming from a patron. Often the police officer is simply another arm of the same government with which the library is affiliated; and, therefore, there may be an underlying desire on the part of library staff and policy makers to assist law enforcement in any way they can. However, there is no legal requirement to acquiesce to a request to immediately view or take possession of a library's video surveillance footage simply because that request comes from a police officer. Georgia law makes it a crime to obstruct or hinder a law enforcement officer in the lawful discharge of his official duties. O.C.G.A. § 16-10-24(a). But, there is no affirmative duty to provide assistance.

Additional factors to consider when planning how a library will respond to requests for access to video surveillance are the legal and ethical concerns about

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library patron privacy and confidentiality. Georgia’s confidentiality statute pertaining to library records states, “Circulation and similar records of a library which identify the user of library materials shall not be public records but shall be confidential and may not be disclosed . . . .” O.C.G.A. § 24-12-30. Therefore, video recordings that reveal what a patron is reading or borrowing could fall under this statute.

Randall (2013) describes the approaches by two public libraries in the Pacific Northwest with regard to requests by law enforcement to view or claim video footage. One library opted to share access with police officers upon request and as a result developed a collaborative relationship with law enforcement. The other library interpreted state law regarding confidentiality as a bar to turning over video footage absent a warrant or subpoena. The relationship between the library and the police department became so adversarial that the library board voted to remove all cameras.

The decision of how a library will respond to requests for its video recordings from members of the public and law enforcement agencies is for the most part a policy decision for the governing authority to make. Evaluation of a particular public library’s position on intellectual freedom, specifically privacy and confidentiality, is a key part of how the issue will be resolved. Regardless of whether immediate access will be granted, a library must consider its surveillance video in terms of public records—which must be disclosed within three business days—and in terms of “circulation records”—which must remain confidential.

### § 2.03 Other Specific Rights

#### [a] Breastfeeding

Under Georgia law, a mother has a right to breastfeed her baby in any location. O.C.G.A. § 31-1-9. Therefore, a library policy prohibiting breastfeeding in the library would violate this law. Of course, library staff could request that breastfeeding occur in a designated area, but any harassment or negative reaction to the mother's choice to breastfeed in an open area would be a violation of law.

#### [b] Petitioning/Protesting Outside Library Building

Solicitation is a recognized form of speech protected by the First Amendment. *Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 629 (1980); *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 788–789 (1988). And this form of expressive activity receives the highest level of protection when it occurs in a public forum. The sidewalks and parking lots surrounding government buildings are traditional public fora. Therefore, it is unlikely that a public library could impose any regulation prohibiting protests or disallowing petitioners from soliciting signatures on its property outside the library building such as in the parking lot or on surrounding sidewalks. An exception would be if the protesters or petitioners are impeding access to the library by other patrons; in that circumstance library officials would be free to impose time, place, and manner restrictions on the activity to allow for library users' access. Moreover, if protesters or petitioners become unruly or aggressive, library staff should call the police for assistance. The right to engage in protests or to solicit signatures contemplates that the actors remain peaceful and non-threatening.

### B. Managing Patron Behavior through Policies

#### § 2.11 General Considerations

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:

- 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."

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." *Brown v. Louisiana*, 383 U.S. 131, 142 (1966). Public libraries are "dedicated to reading and learning and studying," and the 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." *Id.* In 1992, the United States Court of Appeals for the Third Circuit held that libraries provide a place for "reading, writing, and quiet contemplation." *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1263 (3rd Cir. 1992). In the more recent 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." *United States v. Amer. Library Assoc., Inc.*, 539 U.S. 194, 203 (2003). 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.

- 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. 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 board 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. Therefore, the drafters of a library policy regulating

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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.

- **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.” 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.” 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.

- **Uniform application**

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.

- **Properly communicated**

In order to regulate patron conduct, a 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.

- **Due process**

Because individuals have a right to access the public library, depriving someone of this right requires due process of law. The purpose of due process is protection of the individual against arbitrary action of the government. Due process requires the protection that a particular situation demands. 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.” 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.

### **§ 2.12 Rules about Conduct Inside the Library**

#### **[a] Disruptive Conduct**

A public library is free to enact and enforce codes of conduct for library patrons. Regardless of constitutional rights of access to a public library, individuals

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have no right to behave in an unlawful manner when visiting. A federal court once stated, “Prohibiting disruptive behavior is perhaps the clearest and most direct way to achieve maximum Library use.” *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1263 (3rd Cir. 1992).

Through policy, public libraries may prohibit conduct that is otherwise legal; those policies are generally subject to the more lenient level of scrutiny—that is, such policy must be reasonable and viewpoint neutral. Courts have reasoned that because conduct rules allow for the removal of patrons who misuse library facilities, there is no direct impact on the First Amendment rights for which public libraries have been designated. Below are examples of conduct policies imposed by public libraries that have been upheld by courts under the reasonableness standard:

- Public library policy prohibited administering corporeal punishment on library premises. A patron was permanently banned from the library after he struck another patron. The banned patron sued the library, and the court found that the library policy was fundamentally reasonable as it was enacted “to ensure the comfort and security of patrons and library staff” and that it was viewpoint neutral. *Hill v. Derrick*, 2006 WL 1620226 (M.D. Penn. 2006).
- Public library policy prohibited picketing or petitioning inside library buildings. A patron who was soliciting signatures in support of a local political issue was required to stop the activity inside the library. He sued, and the court held that in addition to being viewpoint neutral, the library’s rule was reasonable because it was enacted to make “sure the library branches are accessible and safe, that the atmosphere is not disruptive, and that such activities do not interfere with the general use of the library.” *Jaffe v. Baltimore Cty. Bd. of Library Trs.*, 2009 WL 7083368 (D. Md. 2009).
- Public library policy prohibited disruptive behavior or behavior that constitutes a public nuisance; the court held that the library rightfully terminated a patron’s library privileges after he became belligerent and intimidating to a staff member who had refused to add a letter that he authored to the collection. The court held that the ban imposed on this patron was reasonable because it maintained the peaceful character of the library. *Spreadbury v. Bitterroot Pub. Library*, 862 F.Supp.2d 1054 (D. Mont. 2012).

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- Public library policy required patrons to “be engaged in activities associated with the use of a public library while in the building.” A patron who frequently engaged in loud talking to himself and others and staring at and following other patrons around the library was banned from the library. The court held the policy was viewpoint neutral and was reasonable. The reasonableness determination was based on the court’s determination that the aim of the policy was to “foster a quiet and orderly atmosphere conducive to every patron’s exercise of their constitutionally protected interest in receiving and reading written communications.” *Kreimer*, 958 F.2d 1242.

### **[b] Harassment of Library Staff/Trustees**

Often, individuals who are dissatisfied with decisions made by the library administration harass library staff by making demands and threatening litigation. What library employee has not been told by a disgruntled patron, “I pay your salary!”? More times than not, the targets of harassment are not the ultimate decision makers. However, library trustees, those with whom the power to vote on binding library-related decisions, are not immune to harassment from the public. Employees and trustees alike should be trained on how to respond in the event they are targeted by unhappy citizens.

Warren Graham, author of *The Black Belt Librarian: Real World Safety & Security*, (ALA, 2012) posits a number of tips for how a library employee faced with continuing complaints or harassment can best respond. Begin with the attitude that an individual will comply with a request to cease inappropriate behavior. Maintain an easy demeanor, only becoming more authoritative as necessary. Actively listen to complaints or demands but be deaf to insulting language. Exercise due caution—when an individual is obviously impaired by drugs or alcohol or is physically threatening, call 911 immediately.



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Another strategy for curtailing repeated harassment by an unhappy citizen is to allow for public comment at library board meetings. *See* Chapter 5: Open Meetings/Open Records, Public Comment § 5.17. In other words, redirect the complaining voice to an official forum. Georgia’s open meetings law applies to meetings of the governing authority and any committees of a public library. While Georgia’s Open Meetings Act does not require the board to allow public participation in the meeting, giving disgruntled citizens a time and place to “officially” state their grievances may lessen incidents of harassment of staff and trustees. Whether a library board will allow public comment and what time limitations apply should be addressed in the library’s bylaws. In establishing bylaws to address public comment at board meetings consider the following:

- An individual may address the Library Board only during the “Citizens’ Comments” portion of the Agenda.
- Comments must be limited to subjects on the agenda of the meeting at which the comments are made. The Board will not prohibit comments based on the viewpoint expressed in the comment.
- Following *Robert’s Rules of Order*, there is a ten-minute time limit per issue with a limit of two (2) issues per meeting.
- At the discretion of the Board’s presiding officer comments that are irrelevant, repetitious, or disruptive may be suspended. The presiding officer may also deny the opportunity to speak to a person who has previously addressed the Board on the same subject within the last two months.

### **[c] Patron Distribution of Religious Materials**

The United States Supreme Court has recognized that “the hand distribution of religious tracts is an age-old form of missionary evangelism—as old as the history of printing presses” and is entitled to the First Amendment guarantees of freedom of speech and freedom of the press. *Murdock v. Com. of Pennsylvania*, 319 U.S. 105,

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108 (1943). Even solicitation for funds is a form of protected speech acknowledged by the Supreme Court. *Riley v. Nat'l Fed'n of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988). Accordingly, an attempt to prohibit these activities by a governmental entity, e.g., a public library, is presumptively unconstitutional. Furthermore, public libraries within American society are traditionally thought of as physical embodiments of the “marketplace of ideas.” In *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242 (3d Cir. 1992), the United States Court of Appeals for the Third Circuit held that the public library is a limited public forum designated for the “communication of the written word.” And the American Library Association’s Library Bill of Rights states, “Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.” It would offend these traditional library ideals to prohibit an individual from distributing written materials inside a public library.

Of course, the right of an individual to come into a library and distribute written materials to others is not absolute. A library has the right and the obligation to restrict inappropriate or bothersome conduct. Courts have time and again upheld library rules which are narrowly tailored to prohibit one patron from unreasonably interfering with other patrons’ use and enjoyment of the library. Therefore, a library would be justified in prohibiting the distribution of flyers only in the event the activity curtailed the library use of other patrons or prevented staff from doing their jobs. For example, an individual who comes into a library and distributes materials in a disruptive manner or seeks to engage other patrons in unwanted dialog on the topic would be subject to enforcement of library rules on proper behavior. The mere act of handing out written materials of a religious

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nature, however, is not enough to warrant the abridgment of the patron's right to spread his or her ideas.

There is an additional consideration to be given when the information distributed is religious in nature: is it appropriate for a public library, which is a governmental entity, to allow the dissemination of religious materials? In an attempt to refrain from imposing on a patron's free speech rights, administrators of a public library must be cognizant of another First Amendment guarantee: the establishment clause. The establishment clause bars the government from endorsing religion and religious beliefs or otherwise commenting on religious truth. Government may neither favor religion over nonreligion nor favor one religion or sect over others.

Arguably, allowing an individual to utilize a library to advance religious messages would be an endorsement or comment on religious issues by a governmental entity. Whether there is an establishment clause issue turns on whether the speech at issue—the written religious materials—is private or governmental. Establishment clause responsibility is triggered only when the religious expression is attributable to the government or when the government endorses private speech. In both instances, there must be some government involvement. Under the scenario presented, the library is neither expressing ideas nor endorsing them. The library's involvement begins and ends with its role as a gathering place for people.

A slight modification of the facts would alter the establishment clause analysis. If a library allowed distribution of religious tracts from a particular religious viewpoint but disallowed the distribution of materials from an opposing

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religious viewpoint, there would be a violation of the establishment clause due to an endorsement of a specific religious view by the library. Also, if an employee of a library, during his or her on-duty hours, distributed religious materials, the action would be attributable to the library meaning that the speech now originates from a governmental source rather than a private source.

### [d] Smoking

For more than a decade, public buildings in Georgia have been designated no-smoking zones pursuant to the Georgia Smoke Free Air Act of 2005. In recent years a new product has emerged, the electronic cigarette (e-cigarette). An e-cigarette is any electronic Nicotine Delivery Product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. According to the e-cigarette industry, these devices do not emit second hand smoke. The Center for Tobacco Control Research and Education contends, however, that the devices do emit toxic chemicals into the environment. The question of whether a public library may (or even must) ban the use of e-cigarettes inside its doors involves a look at the current national, state, and local laws as well as considerations of the rights of e-smokers.

In 2010, the Federal Drug Administration was curtailed in its attempts to regulate e-cigarettes as drugs. A federal court held that electronic cigarettes qualify as tobacco products, not drugs. *Smoking Everywhere, Inc. v. U.S. Food & Drug Admin.*, 680 F.Supp.2d 62, 67 (D. D.C. 2010). This ruling was affirmed on appeal. *Sottera, Inc. v. Food & Drug Admin.*, 627 F.3d 891 (D.C. Cir. 2010). In April 2014, the FDA proposed new regulations for tobacco products, including electronic

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cigarettes. The regulations require disclosure of ingredients to buyers but do not touch on public use.

The Georgia Smoke Free Air Act is the next level of legal framework to consider. The Act prohibits smoking in all enclosed facilities, including buildings owned, leased, or operated by, the State of Georgia, its agencies and authorities, and any political subdivision of the state. O.C.G.A. § 31-12A-3. The question is whether the use of e-cigarettes is “smoking.” The Act defines “smoking” as “inhaling, exhaling, burning, or carrying any lighted tobacco product including cigarettes, cigars, and pipe tobacco.” O.C.G.A. § 31-12A-2(16). As set forth above, a federal court has determined that e-cigarettes are “tobacco products.” However, it is unclear whether an e-cigarette is “lighted” as defined by the Act. Therefore, the applicability of the Act to e-cigarettes remains an open question.

Importantly, Georgia’s no-smoking law does not contain a provision that prohibits local governmental entities from enacting their own ordinances. At least three Georgia municipalities have enacted ordinances prohibiting e-cigarettes in county-owned buildings. Accordingly, there is nothing preventing a public library in Georgia from banning e-cigarettes. Under a broad interpretation of the Smoke-Free Air Act of 2005, e-cigarettes are already banned in public libraries. Because that statute does not explicitly apply to e-cigarettes, a library board that wishes to prohibit the use of the devices would be wise to promulgate its own policy. In doing so, the board should be mindful of the four hallmarks of policy-making: (1) reflective of library mission, (2) legitimate purpose, (3) specificity, and (4) uniform application.

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### [e] Internet Usage

Public libraries began offering patrons access to the Internet in the mid-1990s. By 2007, 99.1 percent of public library branches in the United States provided Internet access to patrons.

### [i] Filters

Concerns arose that library computers, partially funded by federal dollars, were being used to access illegal and harmful pornography by adults and minors. As a result, Congress passed the Children's Internet Protection Act (CIPA). 20 U.S.C. § 9134(f)(1)(A)(i) and (B)(i); 47 U.S.C. § 254(h)(6)(B)(i) and (C)(i). CIPA requires public libraries that receive certain federal funds to block three categories of Internet content: (a) obscene material, (b) child pornography, and (c) material that is harmful to minors. After a challenge to the constitutionality of the law by the American Library Association, CIPA was upheld as constitutional by the United States Supreme Court, (*United States v. Am. Library Ass'n, Inc.*, 539 U.S. 194 (2003)) which concluded that Internet access is offered in public libraries "to facilitate research, learning, and recreational pursuits by furnishing materials of requisite and appropriate quality." *Id.* at 206. The Supreme Court recognized that filters can result in blocking constitutionally protected speech, but because CIPA allows librarians to disable the filters for adult patrons, the Court found the temporary inconvenience of requesting the filter be turned off was outweighed by the need to protect minors from inappropriate material. Thus, the fact that the filters could be turned off upon request was a crucial factor in the Court's decision to uphold the law.

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A library policy that results in a wholesale refusal to disable filters at the request of an adult patron falls outside of what was approved by the United States Supreme Court and could expose a library to a legal challenge. For example, in the Eastern District of Washington, a lawsuit was filed by library patrons challenging the policy adopted by the North Central Regional Library District (NCRL) whereby NCRL would not, at the request of adults who wish to access constitutionally protected speech, disable Internet filters that were installed on its publicly-available computer terminals. *Bradburn v. N. Cent. Reg'l Library Dist.*, Civil Action No. 2:06-CV-00327-EFS (E.D. Wa. 2006). The challenge was based both upon the First Amendment of the United States Constitution as well as provisions of the Washington State Constitution. The case was resolved wholly under the Washington State Constitution; therefore, the result is not applicable to a Georgia library, but the possibility of a court challenge to a similar policy is likely in any venue.

Another important factor in assessing a library's Internet use policy is even-handed application to all adult patrons. At least one court has held that a library's failure to follow its own policies and procedures is a violation of the Fourteenth Amendment of the United States Constitution. *Hewlett-Woodmere Pub. Library v. Rothman*, 108 Misc.2d 715, 438 N.Y.S.2d 730 (N.Y. Dist. Ct. 1981). Therefore, the library may not refuse to remove the Internet filter for one adult patron while granting the request of another adult patron.

The resolution of this situation lies in the crafting of a policy related to Internet use that achieves the library's goal (preventing the use of the library's computers to view pornography, even by adults) without infringing on users' First

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Amendment rights. It is important to note that the patrons in the Washington case who had been denied unfiltered access to the Internet were seeking to access constitutionally protected speech such as information on alcohol and drug-addiction topics, an art gallery website, and sites containing health-related information. A patron complaining about the refusal to remove filters to allow him to view obscene material, which the United States Supreme Court has determined is not constitutionally protected speech (*Miller v. California*, 413 U.S. 15 (1973)), would not be likely to prevail in a suit against the library. Of course, making a determination as to whether a particular website contains “obscene material” is subjective. According to the United States Supreme Court, a work is obscene if it would be found appealing to the prurient interest by an average person applying contemporary community standards, depicts sexual conduct in a patently offensive way, and has no serious literary, artistic, political, or scientific value. *Id.* at 24-25. Community standards—not national standards—are applied to determine whether the material appeals to the prurient interest; thus, material may be deemed obscene in one locality but not in another; national standards, however, are applied in determining whether the material is of value. *Id.* at 30.

The Georgia legislature has provided a more detailed definition:

Material is obscene if:

- (1) To the average person, applying contemporary community standards, taken as a whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex, or excretion;
- (2) The material taken as a whole lacks serious literary, artistic, political, or scientific value; and
- (3) The material depicts or describes, in a patently offensive way, sexual conduct specifically defined in subparagraphs (A) through (E) of this paragraph:

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- (A) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;
- (B) Acts of masturbation;
- (C) Acts involving excretory functions or lewd exhibition of the genitals;
- (D) Acts of bestiality or the fondling of sex organs of animals; or
- (E) Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship.

O.C.G.A. § 16-12-80(b).

While both Georgia and federal law provide these definitions and there are numerous court interpretations of what comprises “obscene” material, it is not practical for library staff to spend countless hours determining whether particular sites contain obscene material in order to decide whether to disable the Internet filter. A better approach for the library in this instance may be to include a clause in its policy stating that the viewing of (a) obscene material, (b) child pornography, or (c) material that is harmful to minors is always prohibited on library computers.

The DeKalb County Public Library’s Internet Use Policy is a good example:

While using the Internet at the Library, patrons may not display, print, or transmit images unsuitable for a general audience. This includes, but is not limited to, material that is obscene as defined under Georgia law (O.C.G.A. § 16-12-80), child pornography as defined under federal or state law (18 U.S.C. § 2256; O.C.G.A. § 16-12-100), and material that is "harmful to minors" as defined under Georgia law (O.C.G.A. § 16-12-102). In compliance with the Children's Internet Protection Act [Pub. L. No. 106-554 and 47 U.S.C. § 254(h)], the Library employs a technology protection measure (filtering software) on all computers to block or filter access to inappropriate information. Subject to staff supervision, this technology protection measure may be disabled upon request only for bona fide research or other lawful purposes.



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### **[ii] Viewing/Distributing Pornography**

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. 18 U.S.C. § 1465. The Internet is a method of communication between states and, as such, has been held to affect interstate commerce. Therefore, a patron sending scanned images is distributing. So, if the images meet the definition of obscenity, use of the library computer to access the Internet and send the images is an illegal activity. For Georgia' definition of Obscenity, *see* § 2.12[e][i].

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. This raises the question of why the magazine, if it in fact contains obscene material, 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.

### **[f] Pirating Copyrighted Materials**

Pursuant to the Copyright Act of 1976, the unauthorized reproduction of copyrighted material for resale is illegal. 17 U.S.C. § 106. The Copyright Act does provide an exemption for a library when its equipment is utilized to infringe upon a copyright. Section 108(f) states:

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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.

37 C.F.R. § 201.14. 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. Of course, suspicion by library staff that a patron is utilizing the library's equipment to illegally reproduce copyrighted materials 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.

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. 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." American Library Association Code of Ethics, art. 3, <http://www.ala.org/advocacy/proethics/codeofethics/codeethics> (accessed April 2, 2018). These privacy rights, however, are not absolute and may be outweighed by the legitimate need to ensure 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." American Library Association, "Questions and Answers on Privacy and Confidentiality." Accessed April 2, 2018 at

<http://www.ala.org/Template.cfm?Section=interpretations&Template=/ContentManagement/ContentDisplay.cfm&ContentID=15347>.

### [g] Hygiene & Appearance

Public library policies that require a certain level of hygiene or appearance are subject to the heightened scrutiny test of being “narrowly tailored to achieve a significant government interest.” This is so because courts have recognized that a person utilizing a public library for precisely the First Amendment activities for which it has been designated, i.e., reading, studying, quiet contemplation, may be excluded based on odor or lack of shoes. Below are examples of how courts have addressed challenges to library appearance or hygiene policies.

- A public library policy requiring that all patrons wear shoes was upheld; the court concluded that even under the heightened level of scrutiny, the rule would pass muster because it left open alternative channels of communication and was narrowly tailored to protect a significant governmental interest: maintaining public health and safety and the library’s economic well-being by seeking to prevent tort claims brought by library patrons who were injured because they were barefoot. *Neinast v. Bd. Of Trs. of Columbus Metro. Library*, 346 F.3d 585, 592 (6th Cir. 2003).
- A public library policy requiring that any patron “whose bodily hygiene is offensive so as to constitute a nuisance to other persons” to leave the building was found to be narrowly tailored to protect the library’s interest in maintaining its facilities in a sanitary and attractive condition. The court further held that alternative channels of communication remained open in the sense that the patron could return to use the library once he complied with the hygiene policy. *Kreimer*, 958 F.2d 1242.
- A public library policy under which a person was denied access because of “objectionable appearance” was struck down because “objectionable appearance” was too vague to give patrons notice of what was allowed and what was not. The court noted that without the legal term “nuisance” which was utilized in the policy discussed above, the policy allowed for subjective judgments by library employees. *Armstrong v. Dist. of Columbia Pub. Library*, 154 F.Supp.2d 67 (D. D.C.2001).

See Transient Population at § 2.14 [b].

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### § 2.13 Rules about Bringing Possessions into the Library

Public library policies about what items may be brought into the establishment receive the higher level of scrutiny, which means to be legal they must be “narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of information.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Just as with hygiene and appearance policies, rules prohibiting an individual from entering with certain possessions could result in the exclusion of a person who is otherwise utilizing the library for the precise First Amendment activities for which it has been designated.

#### [a] Guns

A particular possession that libraries are eager to exclude is a weapon. Prior to 2014, most public libraries in Georgia had policies disallowing weapons of any kind being brought into a library building. To the extent that possessing a weapon is expressive activity, which some courts have found, a library policy prohibiting weapons inside a library building would pass muster under either the reasonableness test or the heightened scrutiny test. There is no question that safety and security of library staff and patrons is a significant government interest. However, in 2014, the Georgia General Assembly enacted a law widening the scope of where permit holders may bring their guns. O.C.G.A. § 16-11-127(e)(1). The statute gives licensed gun owners the right to bring their firearms into “a government building when the government building is open for business and where ingress into such building is not restricted or screened by security personnel.” Because most public libraries in Georgia do not have security screening, a public library falls squarely within the statute’s definition of government building.

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Therefore, any policy that prohibits guns in a public library would be in direct contravention to this law. Accordingly, a rule disallowing guns in a Georgia public library would not be especially vulnerable to a First Amendment challenge, but it would likely would be struck down under Georgia law.

### **[b] Shopping Carts**

Preventing patrons from bringing in shopping carts may seem to be a reasonable policy. However, a Boston public library's policy disallowing wheeled carts in the library was questioned by a court because it was not narrowly tailored to serve the governmental interest in keeping passageways and browsing areas clear. *Lu v. Hulme*, 133 F.Supp.3d 312, 331 (D. Mass. 2015). First the court noted that the policy excluded the use of all shopping carts for any purpose in the library, regardless of their size, use, or potential for disrupting the library. Second, the court pointed out notable exceptions to the rule such as strollers, which might take up more space and are less easily stowed than a shopping cart. The court suggested other less restrictive means of accomplishing the government's interest: allowing for wheeled devices "in designated areas," or allowing people to store their carts in a designated area.

### **[c] Trash**

While it may seem obvious that preventing patrons from bringing garbage into a public library is a valid policy, one man's trash is another man's treasure. Thus, a public library has been sued for prohibiting patrons from bringing in "articles with a foul odor which . . . impede use of the library by others." *Lu v. Hulme*, 133 F.Supp.3d 312, 329 (D. Mass. 2015). This policy withstood the challenge because the court found it to be narrowly tailored to serve the library's substantial

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interest in ensuring that all patrons could use the library for its designated purposes. More specifically, the court concluded that the library's goal was served by excluding foul-smelling articles "as this rule prohibits one patron from unreasonably interfering with other patrons' use and enjoyment of the library; it further promoted the library's interest in maintaining its facilities in a sanitary and attractive condition." *Id.*

### § 2.14 Rules Preventing Access Based on Status

Policies that prohibit entry into a public library based on status are subject to the heightened scrutiny analysis, which means to be legal they must be "narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of information." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Courts have long taken a dim view of criminal statutes that target status rather than behavior. *Robinson v. California*, 370 U.S. 660 (1962). For example, specific behavior such as drug possession or use may be criminalized, but status such as drug addiction may not. Of course, library policies are not criminal laws. Nevertheless, the analogy between prohibiting access to a public library based on status and criminal statutes making certain statuses illegal offers guidance in policy development.

#### [a] Registered Sex Offenders

An example of status being used as basis of exclusion from a public library occurred in Albuquerque, New Mexico. The city enacted a regulation prohibiting registered sex offenders from entering its public libraries. When challenged through a lawsuit, the ban received the heightened level of scrutiny, and the court held that the government did have a significant interest in maintaining safety in its public

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libraries. *Doe v. City of Albuquerque*, 667 F.3d 1111, 1115 (10th Cir. 2012).

However, the court concluded that the regulation was not narrowly tailored to achieve this interest because “the wholesale ban on any and all access to public libraries burden[s] substantially more speech than is necessary to further the government's legitimate interests.” *Id.* The court went on to suggest other, less restrictive means to achieve the goal of making the libraries safe for patrons: establishing designated hours during which sex offenders are permitted to use the libraries, requiring sex offenders to check into the libraries, or designating certain areas of the libraries for use by registered sex offenders. *Id.* at 1134.

Georgia has a statute prohibiting a convicted sex offender from loitering at any child care facility, school, or area where minors congregate. O.C.G.A. § 42-1-15(e). A public library has been defined by Georgia law as “a place where minors congregate.” O.C.G.A. § 42-1-12(a)(3). Thus, librarians in Georgia have been asked whether the presence of a registered sex offender in a public library is unlawful.

Under the plain language of O.C.G.A. § 42-1-15(e), the mere presence of a registered sex offender inside a public library is not unlawful. Rather, the law prohibits loitering by a registered sex offender. Loitering is defined as being in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. O.C.G.A. § 16-11-36.

In the 2017 legislative session, the Georgia General Assembly amended the sex offender statute. 2017 Georgia Laws Act 171 (S.B. 250). Accessed April 2, 2018 at <http://www.legis.ga.gov/Legislation/en-US/display/20172018/SB/250>. While at least one lawmaker indicated that this amendment would keep registered sex

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offenders out of public libraries in Georgia, the only subjection that was modified pertains to “loitering” where minors congregate. It appears that the sole purpose of the amendment is to include offenders who are required to register in other states or countries. Therefore, this amendment does not add public libraries to the list of places where a registered sex offender cannot “be.” Of course, conduct by any person, whether a registered offender or not, that causes concern for safety of library patrons and staff should be addressed immediately—and with the assistance of law enforcement personnel if necessary.

### **[b] Transient Population**

Use of public libraries by transient individuals and its accompanying attendant problems are not new to librarians. Libraries are a popular congregation point for homeless persons, who, not welcomed in other spaces, seek shelter, comfort, and quiet escapes. Of course, use of a public library for its intended purposes is open to all citizens. However, the following examples illustrate how use of the library by the homeless can create problems that must be addressed: (1) using library bathrooms for bathing, (2) not wearing shoes or shirts, (3) sleeping or passing out in the library, (4) intoxication, and (5) violence.

It is commonplace for libraries to invoke hygiene rules to address the negative effect the homeless may have on other library users. The creation and enforcement of such rules are where the threats of and actual litigation arise. The most widely-known litigation challenging a library’s hygiene policy is *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242 (3d Cir. 1992). In that case, a public library prohibited a homeless man from using the library due to his odor. The Third Circuit Court of Appeals ultimately upheld the library’s policy,



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which stated, “Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.” The court in *Kreimer* recognized that this rule “would require the expulsion of a patron who might otherwise be peacefully engaged in permissible First Amendment activities within the purposes for which the Library was opened, such as reading, writing or quiet contemplation.” The Third Circuit went on, however, to conclude that because the purpose of the rule was to prohibit one patron from unreasonably interfering with other patrons’ use and enjoyment of the Library, the policy was a narrowly tailored restriction used to promote the library’s “significant interest in ensuring that ‘all patrons of the [Library] [can] use its facilities to the maximum extent possible during its regularly scheduled hours.’”

In a more recent case, *Armstrong v. Dist. of Columbia Pub. Library*, 154 F.Supp.2d 67, 70 (D. D.C. 2001), a court found that the public library’s regulation instructing personnel to deny access to individual patrons with “objectionable appearance” to be a violation of a First Amendment rights. The D.C. court noted that the library enacted the regulation due to “proliferation of more street people and more homeless.” What troubled the court about the regulation was that it lacked a legal standard or a specific definition of “objectionable appearance” and called for the exercise of a subjective interpretation of the objectionable characteristics. The court noted that the lack of specific objective standards for defining exclusion criteria caused the regulation to fail for vagueness.

*Kreimer* and *Armstrong* clearly demonstrate that when a public library opts to deny access to an individual, litigation may be threatened and the threat may well come to fruition. While it may seem absurd that a library risks being sued for

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invoking a rule that simply calls for a modicum of personal decorum by those using a shared public space, the risk is real, and thus libraries must tailor their policies carefully. The two cases discussed above establish that in order for a library policy that results in the denial of access to pass constitutional muster, it must be narrowly tailored to meet a significant interest of the public library, and it must contain objective standards. Therefore, policy-makers grappling with how to prohibit improper conduct such as misuse of restroom facilities, sleeping, not wearing shoes or shirts, and bringing excessive bags or belongings, must take care in drafting a legitimate policy, and staff members must be trained on how to properly apply the policies.

### [i] Sleeping

In the early 1990s, the City of Miami enacted an ordinance that prohibited lying down, sleeping, standing, sitting in any public place including public libraries. A United States district court concluded that the government may not enact laws and regulations that punish the involuntary status of homelessness. *Pottinger v. City of Miami*, 810 F.Supp. 1551 (S.D. Fla. 1992). What mattered to the court was the fact that homeless individuals had no place to go because the ordinance covered all public areas of the city. Because anti-sleeping policies of public libraries pertain to individual public buildings and do include all public property within a geographic region, there is no reason to believe that a library policy would be successfully challenged on the same grounds that doomed the Miami ordinance. Nevertheless, it is important for library administrators and trustees to realize that there are judicial decisions that strike down laws aimed the status of homelessness.

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### [ii] Panhandling

A common library policy that has a disproportionate effect on homeless individuals is disallowance of panhandling or soliciting. Two cases from New York City illustrate the distinction between prohibiting certain conduct associated with the homeless from a specific area versus a regulation pertaining to all public spaces within a municipality. In 1990, a federal appellate court for the Second Circuit found that the Metropolitan Transit Authority (MTA) could lawfully prohibit panhandling on New York City subway trains since it disturbed riders and the MTA designed the subway solely for transportation purposes. *Young v. New York City Transit Auth.*, 903 F.2d 146 (2d Cir. 1990). But less than three years later, the same court ruled that a New York City ordinance that outlawed panhandling in all public places was unconstitutional because panhandling amounted to expressive activity and therefore fell within the ambit of the First Amendment's protection. *Loper v. New York City Police Dep't*, 999 F.2d 699 (2d Cir. 1993). While never addressed by courts, a policy by a public library prohibiting panhandling on its property would likely be analyzed in accordance with the New York City subway case. This is because the library has been designated for specific expressive activities (panhandling is not one of them), and the activity would disturb patrons who are using the library for those traditional purposes (receiving information, reading, quiet contemplation).

### [iii] Ethical & Philosophical Debate

Beyond the legal implications of promulgating policies that disproportionately affect people whose status is homeless, there are ethical and philosophical concerns for public library decision makers. A primary tenet of librarianship is that public

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libraries play a crucial role in the American democracy. American Library Association, Democracy Statement, accessed April 2, 2018 at <http://www.ala.org/aboutala/governance/officers/past/kranich/demo/statement>

The profession has long adhered to a commitment to put information into the hands of the citizenry for the purpose of allowing those individuals to meaningfully participate in this country's democratic society. Yet, many common policies of public libraries constructively exclude a specific segment of society resulting in the loss of the ability to participate in public discourse and receipt of information—what librarianship refers to as the cornerstones of democracy.

It is obvious that public libraries must have codes of conduct; a library where any behavior is tolerated could not serve any valid function. And, for the most part, policies that prohibit behavior or physical attributes that disrupt the activities for which the library has been established will withstand legal challenge. Public librarians are struggling, however, to address troubling societal issues resulting from an increase in homeless and mentally ill populations while they maintain their institutions as places open to all members of the public.

There are two schools of thought within library literature on the issue of homeless and mentally ill patrons' rights to access a public library as opposed to the rights of "legitimate" library patrons. Arguments in favor of reduced access for the homeless and mentally ill patrons include the goal of maintaining a pleasant atmosphere conducive to reading and studying, concern for public safety, and the stress to library workers who must work with and stay in the vicinity of those with offensive hygiene. On the other hand, many authors argue for equal access by homeless and mentally ill patrons contending that that the public library offers a

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place for the mentally ill to interact with normal society, the library provides a community service by identifying and connecting homeless people with the proper social service agencies, and those with mental illness must be accorded rights under the Americans with Disabilities Act.

There are a number of solutions that a public library can employ stemming from these two points of view. More conservative, reactive solutions can include training workers to deal with homeless and mentally ill patrons and defining clear codes of conduct that help both library workers and patrons understand appropriate behavior while in the library. Positive, proactive solutions include ensuring collection development in information areas important to homeless patrons, creating space for the homeless within and outside the library, and educating the public on their lives. Ultimately, how to address the issue of homeless and mentally ill patron use of a public library is up to the library director and the governing board. Their goal in enacting policies should be attaining the maximum library use and access by all members of the community.

### **§ 2.15 Policy Implementation**

Day-to-day implementation of patron policies deserves significant deliberation. Regardless of how carefully policies are drafted, without proper enforcement these policies have no value to a public library.

First, a library must inform its users of its policies. This can be done by physically posting the policies inside 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

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violating a library policy, giving this patron a copy of the written policy at issue is a good idea.

Second, library staff members should be well versed in the details of library patron policies, including the underlying objectives of specific policies. Often library patrons will comply with rules and regulations when they understand the reason behind them. Having library workers confer with patrons about why certain behavior and presentation is inappropriate in the library setting is often a better route to obtaining compliance than simply citing and disciplining infractions with an attitude of “rules are rules.”

Third, consistent enforcement of library policies is absolutely necessary. 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.

Finally, imposing reasonable penalties for rule infractions is crucial to effective enforcement. For the most part, what punishment will result from violations of patron policies is discretionary on the part of library decision makers. 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 of due process 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

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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.

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

In some unfortunate instances, conduct is so egregious or persistently repetitive that decision-makers must bar a patron from the library altogether. Under current Supreme Court jurisprudence (*see* § 2.01[a], herein) members of the public have a protected interest in accessing the library and its holdings, but courts have approved library decisions and policies imposed to prevent access under certain circumstances.

In a federal lawsuit filed in Montana, a district court upheld a public library’s decision to ban a patron from library premises after that patron repeatedly intimidated library staff members in an effort to persuade them to include a particular item in the library collection. *Spreadbury v. Bitterroot Pub. Library*, 862 F.Supp.2d 1054 (D. Mont. 2012). What was important to the Montana court was whether the individual was afforded due process before being deprived of his right of access. Because the Montana patron was notified of what behavior was prohibited and the consequences of such behavior and because he was given an opportunity to be heard during a library board meeting in an effort to obtain reconsideration of library’s decision, the court found that adequate procedural safeguards were utilized in imposing and maintaining the ban.

In another suit filed in federal court in Massachusetts, a library patron complained that he was barred from using a public law library because the librarian determined that “he made other patrons uncomfortable.” *Dolan v. Tavares*, No. CIV.A. 10-10249-NMG, 2011 WL 10676937, at \*3 (D. Mass., May 16, 2011). The

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Massachusetts patron was not informed what conduct was at issue or what conduct to refrain from, and he was not given an opportunity to be heard. After eighteen months of litigation, the Massachusetts library settled the suit on the eve of trial.

Neither library personnel nor trustees must endure harassment from citizens who disagree with library decisions. In the event a disgruntled citizen is threatening or appears violent, assistance from law enforcement should be sought immediately. Also, if a library staff member or trustee is repeatedly approached outside the scope of their official position, it may be wise to seek a restraining order. For less serious behavior, providing an official forum for the public to voice its opinions may diffuse the situation. *See Harassment of Library Staff and Trustees at § 2.12 [b], herein.* Finally, should an individual persist in improper conduct within the library itself, administrators may deny access to the wrongdoer so long as procedural safeguards are employed.

### C. Debt Collection

Unfortunately, overdue fines are a fact of life in public libraries. The imposition of fines is a common practice to encourage the timely return of library materials. Many libraries turn overdue accounts over to collection agencies. A public library in Tennessee even published the names of its patrons with overdue fines along with the titles of items borrowed. The following legal concepts are important to understand for librarians attempting to enforce their fine policies.

#### § 2.21 Statute of Limitations

Overdue fines arise from a breach of the contract between the library and the patron for the borrowing of library materials. Therefore, the library's right to bring a legal action to collect these fines is governed by Georgia's limitation period for

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contracts. The applicable statute provides: “All actions upon simple contracts in writing shall be brought within six years after the same become due and payable.” O.C.G.A. § 9-3-24.

Presumably, the library has obtained the patron’s signature agreeing to the library’s terms regarding the borrowing of library materials. This instrument is the written contract between the parties. While different libraries may have differing terms, the fundamental agreement between library and patron is that the library will allow the patron to borrow its materials and the patron agrees to return the materials by the due date. Failure to return the books by the appointed due date is a breach of the contract. Thus, the six-year time period begins to run on this first day the materials are overdue.

Under Georgia law, the statute of limitation runs from the time the contract is broken and not from the time the actual damage results or is ascertained. *Natl’ Hills Shopping Ctr., Inc. v. Ins. Co. of N. Am.*, 320 F.Supp. 1146 (S.D. Ga. 1970). Therefore, the fact that overdue fines continue to accrue until the materials are returned does not extend the limitation period. The actual breach of duty is the failure to return the books on time. The overdue fees are a form of “liquidated damages,” which is an amount of money that has been stipulated by the parties to a contract as the amount to be recovered in the event of a breach.

It is important to note that a statute of limitation bars legal action. It does not bar all forms of collection efforts. Therefore, a library is not prohibited from contacting a patron who owes fines from six plus years ago and requesting that the fines be paid. This request is just that, a request. It should not be accompanied by a threat of legal action. There is nothing to prevent a library, however, from

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suspending borrowing privileges or refusing to enter into a new contract with a patron who has outstanding fines for overdue materials regardless of when the cause of action accrued.

### **§ 2.22 Juvenile Accounts**

*See Chapter 3: Children in the Library, Fine Collection on a Juvenile Account at § 3.06 [1].*

## **D. Common Legal Claims Asserted by Library Patrons**

### **§ 2.31 Materials Challenges**

Intellectual freedom and a librarian's duty to protect it are prevailing tenets of the library profession. In its Freedom to Read Statement, the American Library Association (ALA) charges librarians with the responsibility to "contest encroachments" on availability of the "widest diversity of views and expressions, including those that are unorthodox, unpopular, or considered dangerous by the majority." Thus, it is not a surprise that challenges to public library holdings occur frequently. According to ALA's Office for Intellectual Freedom, in the first decade of the twenty-first century, American libraries reported 4,659 formal written complaints regarding library materials, nearly a quarter of which occurred in public libraries. It is likely that the actual number of challenges is even higher because of underreporting by libraries, says the Office for Intellectual Freedom.

Collection development textbooks routinely address the controversies that stem from challenges to library holdings. "There is nothing worse than having no idea of what to do when facing an angry person who is complaining about library materials." Evans & Saponaro (p. 560). Often the angry complainant threatens legal action and media exposure. Generally, those who threaten suit against the

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public library regarding materials deemed inappropriate are attempting to coerce or intimidate library decision makers to capitulate to a certain viewpoint.

There are a number of resources available to a librarian facing a challenge. A controversial materials policy is the public library's first line of defense against challenges made to the items within the collection. The value of any policy that addresses external efforts to override a librarian's selections is dependent upon the time and thought that goes into the policy's development. A strong policy will (1) specify the method by which complaints are made, (2) contain specific designation of who will conduct the library's initial review of the material, and (3) denote the final decision maker.

Another resource for librarians facing a materials challenge is *Libraries: An American Value*, a policy document created by the ALA that is directed at library users as opposed to librarians. This document explains the role libraries play in a democratic society, a precept well-known to librarians but perhaps less so by citizens. According to Pinnell-Stephens (80), there is a high success rate of stemming complaints through simple explanation that the library serves the entire community which requires including diverse viewpoints.

Of course, it is important for librarians to be mindful that along with the First Amendment right of access to information that undergirds the profession's desire to provide the widest possible range of viewpoints, opinions, and ideas, the First Amendment guarantees citizens the right to petition the government for redress of grievances. Therefore, it is likely that both librarian and challenger will be relying on the same basis of constitutional authority in a dispute about information made available by the library. What is important for the librarian to

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keep in mind is that while a challenger's reasoning for challenging a particular item within the library collection may seem irrational or silly, the right to proceed with that challenge is not.

Challenges to library holdings will be made, often through unpleasant or overly emotional presentations and demands. And if not handled appropriately, the threat of litigation may arise. It is the responsibility of library administrators to put in place policies for allowing community members to challenge library materials and to express to challengers the role of the public library in democratic society.

Undertaking these steps offers no guarantee that a citizen unhappy with the end result of his or her complaint will not sue the library. If that suit arises, however, it is preferable that it remain about the challenged material rather than blown up to include personality conflicts, name-calling, and finger pointing.

### § 2.32 Free Literature

Placement of "free to the public" materials in an area of the library creates a public forum. (Helms 12). This includes a general information table with flyers and posters from the community for upcoming events and a community bulletin board with advertisements for yard sales, tutoring services, items for sale, etc.

Over a decade ago, a lawsuit against a Georgia public library addressed a controversy over materials placed on a table occasionally utilized for materials free to the public. *Gay Guardian Newspaper v. Ochopee Reg'l Library Sys.*, 235 F.Supp.2d 1362 (S.D. Ga. 2002). The plaintiff claimed his First Amendment rights had been violated when the library closed the free literature table to all but library and government items. The court disagreed, holding that the First Amendment does not require the library to maintain the public forum it created; rather, the library is

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free to opt for a low-cost, conflict-avoiding maneuver such as removal of the forum altogether. *Id.* at 1376.

The holding of the *Gay Guardian* case remains good law. However, a new theory of liability has evolved that library administrators should know about. It is called “retaliatory forum closure,” a proposed cause of action explored in the Summer 2012 edition of *The Arizona Law Review* (Elzinga 502). The article argues that closure of a public forum in response to controversial speech, even if applied equally to all speakers, is a method to conceal viewpoint discrimination and a violation of the First Amendment.

The elements of retaliatory forum closure are:

- the plaintiff exercised or intended to exercise First Amendment speech rights in a forum;
- the government adversely affected the plaintiff’s speech by closing the forum; and
- the plaintiff’s speech or viewpoint was a substantial motivating factor for the government’s decision to close the forum; the burden would then shift to the government to prove that
- it would have closed the forum even absent the protected speech. (Elzinga 521).

Elzinga applies these elements to the *Gay Guardian* case and contends that the library could not have prevailed under this theory (524-25).

While retaliatory forum closure as a cause of action has not been formally recognized by courts, the groundwork has been established to provide a new tool for entities who seek out litigation opportunities to affect governmental policy.

Therefore, when considering whether to establish an area in the library for “free to the public” materials, administrators must consider that, should controversy arise, dissolution of the public forum may not end the threat of litigation.

### § 2.83 ADA Profiteers

A disturbing trend in the area of the law related to access to public accommodations and services is an uptick in the lawsuits generated by “frequent filers” hoping for quick settlement. Often these suits accuse businesses or governmental entities of technical violations of the Americans with Disabilities Act (ADA) such as fading paint on disabled parking spaces, miniscule height discrepancies of soap dispensers or paper towel holders, or square handrails rather than round. The lawsuits filed by these frequent filers are profit driven, not legitimate efforts to raise awareness and seek correction of violations. An example is a single individual who has filed forty-eight federal lawsuits in the Northern District of Georgia alleging violations to access provisions of the ADA; his targets include governmental entities. *Gaylor v. Georgia Dep’t of Nat. Res.*, et al., No. 2:11-CV-288-RWS (N.D. Ga. Oct. 11, 2011). In not one of these suits did the plaintiff notify the target entity of the violations and request voluntary compliance. Rather, he filed suit, and in most instances, he obtained a settlement within six months.

Despite the less than honorable motives of the ADA profiteers and regardless of the trivial nature of the alleged violation, strict compliance with ADA requirements is compulsory. All public libraries should be making every effort to reach full compliance. *See* ADA Technical Requirements at § 2.01 [c] [i], herein.

### E. Additional Resources

#### ADA Technical Compliance

Access Advocates. Accessed April 1, 2018 at <http://www.accessadvocates.com/ada-compliance-library/#.Ve4Hv5WFNMs>.

*Title II Technical Assistance Manual*. Accessed April 1, 2018 at <http://www.ada.gov/taman2.html>.

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## Chapter 2: Patrons

American Library Association. ADA and Libraries. Accessed on April 1, 2018 at <http://www.ala.org/tools/ada-and-libraries>.

### **ADA Accommodations**

United States Department of Justice, Civil Rights Division, Disability Rights Section, Frequently Asked Questions about Service Animals and the ADA. Accessed on April 1, 2018 at [http://www.ada.gov/regs2010/service\\_animal\\_qa.html](http://www.ada.gov/regs2010/service_animal_qa.html).

### **Censorship**

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Helms, Cathy Harris. "Lessons Learned from The Gay Guardian Newspaper vs. Ohoopsee Regional Library System – Or, What You Need to Know about Your 'Free to the Public' Area." *Georgia Library Quarterly* 41.2 (2004): 12-16.

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### **First Amendment Rights**

Corbin, Caroline Mala. "Mixed Speech: When Speech Is Both Private and Governmental." 83 *New York University Law Review* (2008): 605, 616.

Liebler, Raizel. "Institutions of Learning or Havens for Illegal Activities: How the Supreme Court Views Libraries." 25 *Northern Illinois University Law Review* (2004): 1, 73.

### **Internet Use**

Jaeger, Paul T. and Zheng Yan, "One Law with Two Outcomes: Comparing the Implementation of CIPA in Public Libraries and Schools," *Information Technology & Libraries* 28(1) (March 2009): 8.

Piccardo, Larissa. "Filtering the First Amendment: The Constitutionality of Internet Filters in Public Libraries under the Children's Internet Protection Act," *Houston Law Review* 41 (2004): 1440.

## Chapter 2: Patrons

### **Security**

Graham, Warren. *The Black Belt Librarian: Real World Safety & Security*, (ALA, 2012)

### **Surveillance Cameras**

Randall, David. "Video Surveillance in Public Libraries: A Case of Unintended Consequences" 2013 46th Hawaii International Conference on System Sciences. Accessed on April 2, 2018 at <http://ieeexplore.ieee.org/document/6480074/?reload=true>





## Chapter 3: Children in the Library

### CHAPTER 3: CHILDREN IN THE LIBRARY

#### **§ 3.01 A. Child Abuse Reporting**

[1] Staff Training

[2] Form Report

#### **§ 3.02 B. Right/Obligation to Touch a Child for Safety or Disciplinary Reasons**

#### **§ 3.03 C. Duty to Monitor Materials Used & Borrowed by Children**

[1] First Amendment Rights of Minors

[2] Responding to Parental Requests

#### **§ 3.04 D. Photographing Children**

#### **§ 3.05 E. Food Allergies**

#### **§ 3.06 F. Library Card Accounts**

[1] Fine Collection on Juvenile Accounts

[2] Implications for Other Family Members when One Member is Delinquent

#### **§ 3.07 G. Additional Resources**

## Chapter 3: Children in the Library

### § 3.01 Child Abuse Reporting

Effective July 1, 2012, Georgia's law on mandated reporting of suspected child abuse expanded the definition of "child service organization personnel" to include "persons employed by or volunteering at a business or an organization, whether public, private, for profit, not for profit, or voluntary, that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children." O.C.G.A. § 19-7-5. Because Georgia's public libraries provide both education and recreational programs to children, anyone who is employed by, or volunteers at, a public library that serves children is now a mandatory reporter. The statute contains no age limitation for reporters; therefore, all library employees and volunteers, even minors, are subject to the mandatory reporting law.

A mandatory reporter who has reasonable cause to believe a child has been abused must report the situation to the proper authority immediately (no later than 24 hours of the time the abuse is suspected). Any person required under the statute to report abuse who knowingly and willfully fails to do so is guilty of a misdemeanor. It is important to note that this is a criminal statute, and courts have determined that it does not create a private cause of action. In other words, liability for a civil action against the library or an individual working there is not affected by the statute.

The statute identifies four types of abuse: (1) physical injury/death that is non-accidental, (2) neglect or exploitation, (3) sexual abuse, and (4) sexual

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exploitation. The terms “sexual abuse” and “sexual exploitation” are defined by the statute.

### **[1] Staff Training**

Library employees and volunteers should be notified of their responsibilities under the law and given information on what signs to look for in order to spot abuse. Georgia’s Department of Human Services provides detailed information on these issues as well a one-page summary that will be helpful library employees. To learn more, go to <http://dfcs.dhr.georgia.gov> and access the “Services” drop-down menu to select “Child Abuse & Neglect.” Another resource for educating personnel on how to spot abuse is a free on-line training course available from Georgia’s Office of the Child Advocate, accessed March 30, 2018 at <https://oca.georgia.gov/mandated-reporting>.

It is crucial that library personnel understand how to make a report of abuse in addition to knowing how to identify abuse. As applied to public libraries, the statute contains an ambiguity in the reporting procedure. The general reporting procedure requires the person who has a reasonable belief that abuse is or was occurring to make an immediate oral report to the appropriate child welfare agency or, in the absence of such agency, the appropriate police authority or district attorney. In most locations, the child welfare agency that provides protective services is the county’s Division of Family and Children’s Services (DFACS). DFACS locations are published at <https://dfcs.georgia.gov/locations>.

Subsection 2(c) slightly alters the procedure as to employees or volunteers at “a hospital, school, social agency, or similar facility” to allow compliance through

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notification of the person in charge of the facility. It then becomes the responsibility of the person in charge of the facility to make the immediate oral report to the proper authority.

The applicability of subsection 2(c) to public libraries is unclear. Given the state's policy for the establishment of public library service as "part of the provisions for public education" (O.C.G.A. § 20-5-1), it is reasonable to conclude (but not certain) that a public library is a "similar facility" to a school. However, this is a decision that each library system, through its board and library director, must reach individually. Making this decision is necessary in order to adopt and implement a policy on mandatory reporting and educating personnel on what is required.

Even if a library determines it may utilize the subsection 2(c) notification process rather than require every individual employee or volunteer to report directly to the child welfare agency, there is at least a small number of employees that require training in how to make the proper report. In addition to educating personnel on how to identify abuse suggested above, for those required to report directly to DFACS or law enforcement, training should include:

- the name and contact number for the appropriate agency,
- the nature of the information to be provided verbally,
- the contents of the follow-up written report (*see* sample form below).

Essentially, the reporter should provide a description of what was observed or the circumstances that led to the suspicion of abuse. The reporter has no obligation to investigate, and, in fact, investigation should be left to child protection professionals. Library personnel will have complied with the statute if all known

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information is reported. Library employees may be cautious about revealing information about library patrons because of Georgia's confidentiality statute regarding library records, O.C.G.A. § 24-12-30. It should be noted, however, that the law regarding confidentiality applies to circulation records. Therefore, providing the identity of a suspected abuse victim and that of the parent or caretaker to child protection services does not violate the confidentiality statute.

Finally, personnel should be informed that the mandatory reporting statute does not guarantee anonymity; however, written reports that are provided to law enforcement agencies are not subject to the Open Records Act. Moreover, your local DFACS office may allow confidential reporting. The statute does provide immunity from civil and criminal liability for a mandatory reporter who makes a report in good faith.

Public libraries strive to be integral in children's educational and recreational pursuits. As a result, libraries are places where children commonly gather. Therefore, additional responsibility for the protection of these children is imposed by law on those who are working and volunteering in libraries. The key to gaining compliance with Georgia law on the reporting of suspected child abuse is through planning and careful instruction to those subject to the statute. Informed personnel who have been properly trained in how to spot abuse and what steps to take when abuse is suspected will not be intimidated by legal responsibilities in this area. Accordingly, it is incumbent upon library administrators to take the time to create a plan for compliance and keep all employees up to date and well informed on what roles they will take in fulfilling the law's requirements.

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**[2] Form Report**

**O.C.G.A. § 19-7-5 Child Abuse Report**

DATE:

TO: [DFACS/Law Enforcement Agency/District Attorney]

FROM:

RE: [Name of child] and [date of birth of child]

This report of possible child abuse is being made pursuant to O.C.G.A. § 19-7-5. It is suspected that the said, [name of child], who resides at [address of child] and whose parents/caretakers are [name(s) of parent(s)/caretaker(s)], who reside at [address of parents/caretakers] has been the subject of child abuse. The basis for the suspicion of abuse is [description of basis for abuse suspicion].

In addition, the child is currently suffering from the following injuries, [description of injuries, if any] and in the past has had the following injuries [description of any previous injuries]. The suspected abuse has been documented in the following manner [list of any other documentation such as pictures or statements that document the suspected abuse].

**§ 3.02 Right/Obligation to Touch a Child for Safety or Disciplinary Reasons**

A frequent question from library workers is to what extent they can touch a child who is not being supervised by a parent for purposes of discipline or safety. This question is best addressed from two different perspectives: (1) what is the obligation of a library staff member to aid or protect a child through physical intervention, and (2) what is the potential for liability if a library staff member physically touches a child to either shield the child or another from harm, discipline a child, or comfort a child.

In a strictly legal sense, there is no duty on a library employee to protect or aid a child through physical intervention. However, the “obligation to protect children from harm” has been recognized as one of the fundamental tenets of library policy (Rubin 186). According to Rubin, this policy stems from the broader obligation of society as a whole to protect those who are defenseless or vulnerable.

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Decisions about what steps to take to protect a child or any person from harm are best left to individuals on an incident-by-incident basis. The totality of the circumstances is crucial to how one will react, particularly the level of personal risk involved. However, library administrators should recognize and address the issue with employees, informing them that there is no duty imposed by law to come to the aid of children but reminding them of the library's dedication to the well-being and safety of all library patrons.

On the opposite end of the spectrum, library employees must understand the potential for liability if they do lay hands on a child (or any person) to aid, assist, comfort, or discipline. According to the policy of the American Library Association, librarians, unlike teachers, do not act in loco parentis (as one charged with a parent's rights, duties, and responsibilities). Usually this is discussed in terms of what responsibilities librarians have for monitoring a child's access to materials. However, by affirmatively rejecting this responsibility, librarians likewise give up rights they may otherwise have to discipline or supervise children. Therefore, there is no protection from liability that arises from the relationship between librarian and child as there is in the relationship of teacher and child.

The best way to assess potential for liability is to consider what legal causes of action (bases for suit) may arise when a library employee physically touches a child. Of course, in most instances the choice to physically intervene is made in the best interest of the child, and the outcome is a grateful parent; however, the American society is a litigious one, and it is wise to consider worst-case-scenarios in order to fully appreciate the risk of liability.

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Assault and battery are the relevant tort actions that may arise in the event of an unauthorized touching. An assault occurs where all the apparent circumstances, reasonably viewed, are such as to lead a person reasonably to apprehend a violent injury from the unlawful act of another. It is the apprehension that gives rise to the cause of action of assault. An actual touching is thus not a necessary element of the tort of assault, it being necessary only to show an intention to commit an injury, coupled with the apparent ability to do so. The act of intentionally causing physical harm to another is civilly actionable as a battery. Because of the importance of one's right of the inviolability of his or her person, any unlawful touching, or unauthorized offensive contact, no matter how minimal, is actionable as a physical injury to a person.

With respect to liability of the employees themselves, they have a strong defense of immunity. Because library employees are public agents, they are immune from liability for their discretionary acts unless they are done with malice or intent to injure. The doctrine of official immunity "protects individual public agents from personal liability for discretionary actions taken within the scope of their official authority, and done without willfulness, malice, or corruption." Under Georgia law, a public officer or employee may be personally liable only for ministerial acts negligently performed or acts performed with malice or an intent to injure.

*Cameron v. Lang*, 274 Ga. 122, 123(1), 549 S.E.2d 341 (2001).

Turning to the liability of the library itself, i.e., through a suit against the library board, another form of immunity, sovereign immunity, may provide protection. The Georgia Constitution of 1983 provides that the defense of sovereign

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immunity extends to the State and all of its departments and agencies. This provision has been construed as extending the defense to counties, *Gilbert v. Richardson*, 264 Ga. 744, 747(2), 452 S.E.2d 476 (1994), the Board of Regents, *Wilson v. Bd. of Regents of Univ. Sys. of Georgia*, 262 Ga. 413, 419 S.E.2d 916 (1992), school districts, *Crisp Cty. Sch. Dist. v. Pheil*, 231 Ga. App. 139, 498 S.E.2d 134 (1998); *Hunt v. City of Atlanta*, 245 Ga. App. 229, 537 S.E.2d 110 (2000), and community service boards, *Satilla Cmty. Serv. Bd. v. Satilla Health Servs., Inc.*, 251 Ga. App. 881, 555 S.E.2d 188 (2001), judgment rev'd on other grounds, 275 Ga. 805, 573 S.E.2d 31 (2002) and opinion vacated in part, 259 Ga. App. 93, 575 S.E.2d 927 (2003), but not to municipalities, *City of Thomaston v. Bridges*, 264 Ga. 4, 439 S.E.2d 906 (1994).

Thus, the library board, as an entity of either a county or the State, in the absence of any applicable exception or statutory waiver, will be shielded by sovereign immunity for a tort committed by an employee. *Davis v. Dublin City Bd. of Ed.*, 219 Ga. App. 121, 122, 464 S.E.2d 251 (1995); *Coffee Cty. Sch. Dist. v. Snipes*, 216 Ga. App. 293, 294, 454 S.E.2d 149 (1995); *Woodard v. Laurens Cty.*, 265 Ga. 404, 405(1), 456 S.E.2d 581 (1995).

In conclusion, the question of when a library staff member may lay hands on child is not easy to answer. First, there is no legal duty of a library employee to take action to protect or assist a child. Second, liability for touching a child could arise in the context of the torts of assault and battery. However, the likelihood is that the employee would be protected by official immunity and library itself would be protected by sovereign immunity.

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### §3.03 Duty to Monitor Materials Used or Borrowed by Children

#### [1] First Amendment Rights of Minors

The First Amendment of the United States Constitution creates a right to access information. This right is not specifically enumerated within the language of the First Amendment, but the United States Supreme Court's interpretation of the law has broadened its scope to encompass the right to receive information and ideas as well as the right to read. As stated by Torrans (2004), "Public libraries play a vital role in promoting the fullest exercise of that right." However, questions may arise when considering access issues with respect to minors.

The United States Supreme Court has held that the First Amendment applies differently to minors than adults. *Erznoznick v. Jacksonville*, 422 U.S. 205, 212 (1975). Nevertheless, the Court said, "[M]inors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them." *Id.* at 212-13 (emphasis added). And at least two Supreme Court Justices recognized that the right may be particularly strong at a public library. *Bd. of Educ. Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 892. Therefore, only in limited instances will a governmental entity such as a public library be able to legitimately deny a child access to information contained in the library.

#### [2] Responding to Parental Requests

Whether library workers monitor materials children use and borrow at the public library becomes further complicated when parents request library staff to

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control their children's access to information. Undoubtedly, parents are entitled to substantial control over their children's access to information, and the First Amendment does not restrict the power of private individuals to control the flow of information to those under their supervision. A librarian asked by a parent to monitor what a child reads or borrows is left to decide whether to (1) reinforce the parents' position, (2) remain neutral, or (3) even facilitate the minor's efforts. The legality of each position is considered below.

The first avenue, reinforcing a parent's position, could be a violation of a minor's individual right to receive information as guaranteed by the First Amendment. The notion of facing legal action, however, in the form of a lawsuit by the child against a library for upholding the restrictions imposed by his or her parent, is quite farfetched. Therefore, analysis of this course of action is really more of philosophical exercise than a legal review. According to the American Library Association's (ALA) Intellectual Freedom policies, "Unless there is an applicable Harmful to Minors Act, a policy of free access (limited only by parental decisions of appropriateness for very young children) provides the greatest insulation for the library from constitutional attack for restricting access to materials protected by the First Amendment." Additionally, ALA publishes a four-page notice alerting young people to their rights to access information (accessed March 30, 2018 at <http://www.ala.org/alsc/sites/ala.org.alsc/files/content/issuesadv/intellectualfreedom/kidsknowyourrights.pdf>).

The second course of action, remaining neutral in the face of parental controls, has no legal implications for a librarian. There is no legal compulsion to

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protect another's First Amendment rights. There remain, however, the tenets of intellectual freedom that are interwoven into the profession of librarianship.

Therefore, evaluation of this choice of action, like the first, will likely come down to philosophical beliefs rather than legal concerns.

The final course of action, facilitating access in contravention of a parent's dictates, likewise raises no legal concerns. While Georgia does have criminal laws against the distribution of materials harmful to minors, O.C.G.A. § 16-12-103, public libraries are expressly exempted from the law. O.C.G.A. § 16-12-104. Therefore, a librarian who assists a child in accessing information that has been declared off limits by a parent, is not in legal jeopardy. Of course, the real world difficulties that may arise as a result of circumventing parental authority are considerable.

In conclusion, the only legal concern for a public library in deciding whether to monitor the access of information of minors turns on the breadth of children's First Amendment rights as compared to adults. While the limitations of a minor's right to receive information are murky, it is certain that these individuals are constitutionally entitled to access information. Nevertheless, as a practical matter, the level of exposure to risk in terms of legal action is extremely low. Therefore, a public library's decision on this matter will be driven largely by philosophical and feasibility concerns. Taking the time to develop a policy to guide the response to this thorny issue will mean balancing the profession's ethical beliefs about information access with an individual organization's day-to-day realities in terms of what its patrons expect. Below is a sample policy reflecting a library's decision to remain neutral as to materials accessible by minors.

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The Library upholds the right of each individual to have access to constitutionally protected materials. The Library is designed to serve its patrons with a wide range of educational and recreational collections, programs, and services, some of which may contain material of a controversial nature. Library staff cannot assume a parental role or take responsibility for children in the Library or for what children check out or access. It is the responsibility of parents and legal guardians to determine what information is appropriate for their children. Parents and legal guardians are encouraged to take an active role in their child's reading activities and interests.

### § 3.04 Photographing Children

There is no prohibition against taking a photograph of a child in a public place—unless the photographer is a registered sex offender. O.C.G.A. § 42-1-18(b). In the context of a child participating in library events, the setting is almost certainly a public place. Of course, there are privacy rights that protect individuals from intrusion into their private affairs. Thus, an individual, regardless of age, would have a claim against a photographer who takes a picture of the subject in a place where a reasonable person would have a legitimate expectation of privacy. For example, a public restroom is, as its name suggests, a “public place,” however, this is an area where a reasonable person would expect privacy. *Johnson v. Allen*, 272 Ga.

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App. 861, 864, 613 S.E.2d 657, 660 (2005). Therefore, photography in the library should be limited to open areas where there would be no expectation of privacy.

A more complex issue is how a photograph, legally taken, will be utilized. Before publishing a photograph of any person, regardless of age, in a newsletter or on-line, library administrators must consider the “privacy torts.” Under Georgia law, there are four species of the tort of invasion of privacy: (1) intrusion upon a person’s seclusion or solitude, or into his private affairs; (2) public disclosure of embarrassing private facts about a person; (3) publicity which places a person in a false light in the public eye; and (4) appropriation of a person’s name or likeness for benefit or advantage. *Torrance v. Morris Pub. Grp. LLC*, 281 Ga. App. 563, 572, 636 S.E.2d 740, 747 (2006).

The first of the four types of invasion of privacy is the tort discussed above regarding the taking of the photo—an unreasonable and highly offensive intrusion upon another’s seclusion. As a practical matter, photos taken in the public area of the library will never trigger privacy concerns of this nature.

The second type of invasion of privacy recognized in Georgia is a public disclosure of embarrassing facts about an individual, which has the following elements: (1) public disclosure of private facts; (2) the facts disclosed to the public must be private, secluded or secret facts and not public ones; and (3) the matter made public must be offensive and objectionable to a reasonable man of ordinary sensibilities under the circumstances. *Eason v. Marine Terminals Corp.*, 309 Ga. App. 669, 710 S.E.2d 867 (2011). The risk of liability for this tort in the context of the publication of a photograph taken in public is very low. A famous example of

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this type of claim is a 1976 case in which a federal court in Pennsylvania held that a picture taken of a fan with his pants unzipped at a Pittsburgh Steelers football game, while embarrassing, was not the disclosure of private information. The key to this finding was that the photograph was taken in a public setting. *Neff v. Time, Inc.*, 406 F. Supp. 858, 862 (W.D. Pa. 1976)

The third species of invasion of privacy in Georgia is placing an individual in a false light in the public eye. The “false light” element of this tort requires depiction of an individual as something or someone that he is not and the false light in which he was placed would be highly offensive to a reasonable person. *Williams v. Cobb Cty. Farm Bureau, Inc.*, 312 Ga. App. 350, 718 S.E.2d 540 (2011), *Blakey v. Victory Equip. Sales, Inc.*, 259 Ga. App. 34, 576 S.E.2d 288 (2002); *Nelson v. Glynn-Brunswick Hosp. Auth.*, 257 Ga. App. 571, 571 S.E.2d 557 (2002); *Ass’n Servs., Inc. v. Smith*, 249 Ga. App. 629, 549 S.E.2d 454 (2001). As with the other types of invasion of privacy set forth above, the photograph of a person, regardless of age, at a public library event is not at all likely to arise to a false light claim.

The final type of invasion of privacy, appropriation of the likeness of another for advantage, is more pertinent to the discussion of whether to obtain consent from the subjects of photographs taken by public library workers. Unlike a claim based on intrusion, disclosure, or false light, an appropriation claim does not require the invasion of something secret, secluded, or private, nor does it involve falsity. Instead, the tort consists of the appropriation, for the defendant's benefits, use, or advantage, of another's likeness. *Bullard v. MRA Holding, LLC*, 292 Ga. 748, 740 S.E.2d 622 (2013). In most instances, lawsuits stemming from the tort of

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appropriation involves commercial exploitation. *Pierson v. News Grp. Publ'ns, Inc.*, 549 F. Supp. 635 (S.D. Ga. 1982). For example, a photograph of a celebrity using a commercial product that is published by the manufacturer of the product to promote the item could form the basis for a successful appropriation claim. There is little likelihood that a photograph used by a governmental entity to promote an event would be considered commercial exploitation; however the risk of exposure under the appropriation tort is not zero.

Despite the absence of explicit legal requirements to obtain consent to photograph, the library cannot go wrong by asking for permission, particularly when children are involved. A public library is an integral part of the community and in the interest of promoting community relations, announcing that photographs and video will be taken at events and that the images may be published by the library can only serve to facilitate communication and avoid disharmony between the library and its patrons. For a library wishing to assure itself that use of photographs of children will not cause concern to parents, the sample consent form below can be used.

#### SAMPLE PARENTAL CONSENT FORM

I give permission for my child's photograph, taken in conjunction with his/her use of the public library or attendance at a public library event or activity, to be put on the [name of public library]'s World Wide Web (WWW) site or published in the [name of public library]'s newsletter or other library-affiliated publication.

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_____	_____
[Minor Child]	[Parent]
Date: _____	

### § 3.05 Food Allergies

According to Food Allergy Research and Education, a non-profit organization formed in 2012, up to 15 million Americans have food allergies, including 5.9 million children under age eighteen. The Centers for Disease Control report that between 1997 and 2008, the prevalence of peanut or tree nut allergy appears to have more than tripled in U.S. children. Given that public libraries serve a large childhood population, a recent suggestion to remove peanuts from a public library's vending machine by a parent of a child with severe nut allergies is unsurprising.

The relevant law for analyzing what a public library's obligations are with respect to safeguarding individuals with food allergies is the ADA. Title II of the ADA prohibits public providers of programs and services from (a) discriminating against "a qualified individual" with a disability" and (b) excluding such individual from participation in or denial of the benefits of services, programs, or activities. 42 U.S.C. § 12131 *et seq.* Therefore, a public library would have an obligation to take steps ensure that a person with food allergies is able to safely utilize the library's programs and services only if a food allergy is a "disability" under the ADA.

By interpreting the ADA narrowly, courts, prior to 2009, consistently refused to grant disability status to those with food allergies even in cases where the allergies were severe. *Land v. Baptist Med. Ctr.*, 164 F.3d 423, 424-25 (8th Cir.

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1999). However, effective January 1, 2009, the ADA was amended to expand the definition of a disability. ADA Amendments Act of 2008, Pub. L. No. 110-325, § 2(a)(4), 122 Stat. 3553 (noting that court decisions had “narrowed the broad scope of protection intended to be afforded by the ADA”). While the new law did not expressly state that a food allergy is a disability, courts interpreting the amendments have concluded that a food allergy could be a disability under the ADA.

In a significant case litigated under the 2009 amendments to the ADA, the U.S. Department of Justice announced in January 2013 that it had reached a settlement with Lesley University, a private Massachusetts university of 6,000 students. Settlement Agreement between the United States of America and Lesley University (Jan. 25, 2013), accessed March 30, 2018 at [https://www.ada.gov/lesley\\_university\\_sa.htm](https://www.ada.gov/lesley_university_sa.htm). The settlement required the school to accommodate students with food allergies and celiac disease in the university's mandatory meal program. In a supplement intended to provide answers concerning the implications of the agreement, the Justice Department stated that “[s]ome individuals with food allergies have a disability as defined by the ADA, particularly those with more significant or severe responses to certain foods.” While the supplement also explained that the “ADA does not require every place of public accommodation that serves food to the public” to provide accommodations for individuals with food allergies, the Justice Department’s view that schools must accommodate students with food allergies or face charges of ADA violations was made clear.

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In an Iowa case decided a few days later, a state appellate court reiterated the Justice Department's new stance on food allergy as a disability under the ADA. *Knudsen v. Tiger Tots Cmty. Child Care Ctr.*, No. 12-0700, 828 N.W.2d 327 (unpublished table decision), 2013 WL 85798 (Iowa Ct. App. Jan. 9, 2013). In *Knudsen*, a mother sued when her daughter was denied enrollment in a childcare center due to the girl's allergy to tree nuts. The court said that the ADA Amendments Act provided the "framework for an analysis of 'disability' under [Iowa] state law" and that its rules of construction clearly included episodic impairments like food allergies.

The amendments to the ADA and the outcomes of the two cases relying on those amendments make it clear that disability-discrimination claims brought by individuals with severe food allergies under the ADA must be taken seriously. When a public library is faced with a request for an accommodation related to a food allergy—in the example used here the request was for removal of peanuts from a library vending machine—library administrators must determine whether to afford the accommodation in the same manner the library addresses other requests for accommodations such as allowing entry to a service animal or the provision of auxiliary aids and services like readers, taped texts, and Braille materials.

In the event a public library decides to accommodate a food allergic patron, questions will arise as to how far the library must go in ensuring its premises are safe for the allergic individual. For example, will library staff be required to prohibit other patrons from bringing in food items that may be detrimental to others? And is the library responsible for ensuring that all foods it provides in vending machines be

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free of ingredients that may trigger allergies? The ADA's "reasonable modification" principle does not require a public entity to employ any and all means to make services accessible to persons with disabilities but only to make "reasonable modifications" that would not fundamentally alter the nature of the service or activity of the public entity or impose an undue burden. *Tennessee v. Lane*, 541 U.S. 509, 531-32 (2004). Furthermore, a public library does not become a guarantor of safety by providing an ADA accommodation; the efforts to create a safe environment for a food allergic patron to utilize the programs and services of the public library must be reasonable and done in good faith.

### **§ 3.06 Library Card Accounts**

#### **[1] Fine Collection on a Juvenile Account**

Under Georgia law, a person under the age of eighteen does not have the capacity to enter into a valid contract. *Jones v. State*, 119 Ga. App. 105, 166 S.E.2d 617 (1969). Thus, a contract to which a minor is a party is voidable. O.C.G.A. § 13-3-20(a). The term "voidable" means that the minor may elect to ratify or void the contract upon reaching the age of majority. *Clemons v. Olshine*, 54 Ga. App. 290, 187 S.E. 711 (1936). Therefore, a party contracting with a minor is at a distinct disadvantage as the contract may be enforceable only should the minor consent. The Georgia legislature has carved out certain exceptions to this general rule. For instance, a person of any age who borrows and agrees to repay student loans is liable under the contract. O.C.G.A. § 20-3-287. However, there is no such exception applying to library card agreements. Furthermore, the parent of a minor child is not liable for debts incurred by this child unless the debt is for certain necessities that

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the parent has failed to provide to the child. *Wilkins v. Barnes*, 11 Ga. App. 350, 75 S.E. 361 (1912). Because library materials are not of the type of item considered “necessities” by courts, without express agreement by the parent, he or she will not be liable for the child’s debts to the library.

Fines and fees incurred before a patron is of the legal age to enter into a contract will not be collectable in a court of law unless the patron consents to the responsibility after reaching age eighteen. This is true even if collection efforts begin after the patron turns eighteen. Accordingly, libraries should always contract with a minor’s parent or guardian to be legally responsible for the child’s account at least until the child becomes eighteen.

If the library has an agreement with the parent to be legally responsible for the child’s account, then there is no problem with turning that account over to a collection agency. While the library card may be in the name of a juvenile, the legal responsibility for that account falls on the parent, and it is the parent who will be the target of collection.

In situations where a library card was issued to a minor, but that person is now over the age of eighteen, the library may be successful in collection efforts against the now eighteen year old but only for activity that occurred after the patron turned eighteen. Under Georgia law, a person who, after turning eighteen, continues to enjoy the benefit of a contract executed when he or she was a minor, ratifies the contract and becomes liable under its terms. O.C.G.A. § 13-3-20(a). In other words, if a patron under the age of eighteen agrees to certain borrowing terms with the library and breaches those terms before turning eighteen, he or she could

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not be held accountable in court. However, if that same patron continues to use the library card to borrow materials after the age of eighteen, any breach of the borrowing agreement that occurred after the eighteenth birthday would be actionable.

Whether a parent who is a signatory to a minor's library account is responsible for payment of fines depends entirely upon the language of the agreement. A parent, or any person over the age of eighteen, may agree to be legally responsible for the debts of another person. Therefore, if the library card agreement for the child stated that the signature of the parent represents the parent's agreement to be responsible for paying for fines incurred by the child, the contract is with the parent, and the parent is liable for those debts regardless of the age of the child. However, if the language of the library card application states that the parent agrees to be liable for the account until the child is of legal age, then the parent is responsible only for breaches that occurred prior to age eighteen.

These examples demonstrate the need for the library to carefully draft its borrowing agreements. When the patron is under eighteen, the agreement should be with both minor and parent. Under this scenario, the library may hold the parent liable for any fines resulting from activity before the child turns eighteen and then hold the child liable for activity that occurs after he or she becomes eighteen.

### **[2] Implications for Other Family Members when One Member is Delinquent**

Library administrators should carefully consider policies regarding borrowing privileges for families. There is no obvious legal issue with a policy that results in all family members being blocked if one of the cards is delinquent. This is because

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borrowing library materials is a privilege, not a right. Legal concerns would arise if the library takes the additional step of trying to enforce collection efforts against the non-delinquent family member. Collection efforts should be focused solely on the signatory of the account.

From a general fairness perspective, a family account policy that results in disabling all family members' cards if one member is delinquent is troubling because an individual may be punished for the deeds of other members of the family over which he or she has no control. The library, however, has a responsibility to the public as a whole to protect its collections and this includes the ability to prohibit abuse of borrowing privileges.

### **§ 3.07 Additional Resources**

#### **Duty to Protect Minors**

Rubin, Richard E. (2004). *Foundations of Library and Information Science 2d ed.* Neal-Schuman Publishers: New York, 186.

#### **First Amendment Rights of Minors**

Ennis, Bruce J. (2009). *ALA Intellectual Freedom Policies and the First Amendment.* American Library Association.

Ross, Catherine J. "An Emerging Right for Mature Minors to Receive Information." *University of Pennsylvania Journal of Constitutional Law.* (1999): 223, 243.

Torrans, Lee Ann, (2004). *Law and Libraries: the Public Library.* Libraries Unlimited: Westport, CT.

American Library Association. 2004. Interpretation of the Library Bill of Rights. Accessed March 30, 2018 at <http://www.ala.org/Template.cfm?Section=interpretations&Template=/ContentManagement/ContentDisplay.cfm&ContentID=31870>





## CHAPTER 4: TRUSTEES & FRIENDS

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§§ 4.04 – 4.10 Reserved

### **B. Supporting Public Libraries in Georgia: Friends Groups**

§ 4.11. [1] Collection of Sales Tax

§ 4.12 [2] Applicability of Open Meetings Act

### **C. Additional Resources**

## Chapter 4: Trustees & Friends

### A. Governing Public Libraries in Georgia

#### § 4.01 Board of Trustees

Georgia law requires that public libraries in this state be governed by boards of trustees. O.C.G.A. § 20-5-41. The legislature has enacted statutes that (1) establish how members of boards are chosen and their terms of service (O.C.G.A. § 20-5-42), (2) delineate the duties and responsibilities of boards, (O.C.G.A. § 20-5-43), and (3) prohibit compensation to board members with the exception of reimbursement of any expenses incurred in library business (O.C.G.A. § 20-5-44).

In order to be eligible for state funding, public library boards must meet a minimum of four times per year and maintain official minutes of meetings. Georgia Public Library Service, “Policies for Public Library State Grants Program,” ¶ 1.4 March 2015. Accessed April 3, 2018 at [http://www.georgialibraries.org/lib/stategrants\\_accounting/policies-library-state-grants-program2015-05082015.pdf](http://www.georgialibraries.org/lib/stategrants_accounting/policies-library-state-grants-program2015-05082015.pdf). Meetings of library boards of trustees are required to be open to the public. O.C.G.A. § 50-14-1.

Public library trustees are the governing agents of the organization. A trustee’s authority to govern is granted through state law and, as such, library trustees are public officials. As an appointed public officer, a library trustee has basic legal responsibilities in carrying out his or her duties. For example a trustee must obey all federal, state, and local laws, and he or she must act with diligence and in good faith on behalf of the constituency. In other words, a public library trustee holds a public trust for the citizens and taxpayers of the community served.

## Chapter 4: Trustees & Friends

### **[a] Statutory Duties**

Georgia law delineates specific duties and responsibilities to library boards.

O.C.G.A. § 20-5-43 provides:

The board of trustees shall have duties and responsibilities which include but are not limited to the following:

- (1) To employ a library director who meets state certification requirements and such other employees as necessary upon the recommendation of the library system director; provided, however, that the board shall be authorized to delegate employment of staff members to the library system director;
- (2) To approve budgets prepared by the library system director and assume responsibility for the presentation of the library's fiscal needs to the supporting agencies;
- (3) To attend board meetings;
- (4) To establish policies governing library programs, including rules and regulations governing the use of the library;
- (5) To set policy for the administration of gifts of money and property;
- (6) To present financial and progress reports to governing officials and to the public;
- (7) To notify the appropriate authorities of a vacancy on the board so that a person may be appointed to complete unexpired or full terms; and
- (8) To notify the library system director, in advance, of all meetings of library boards and board committees.

To the extent that a board member fails to uphold these statutory duties, the likely result would removal from the board. If a board member engages in criminal conduct, such as embezzlement of library funds, he or she would be subject to prosecution by state authorities.

### **[b] Legal Liability**

As a public body entrusted with making decisions for the good of the citizenry, a library board's decisions are subject to public scrutiny and to challenges

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in court. Therefore, board members may find themselves named as defendants in lawsuits. It is important to understand the distinction between being named in the capacity of a board member and being named individually. A board is a collective set of individuals that operates as a single entity. No individual on the board possesses the authority to act on the board's behalf unless that authority is delegated by the board as a whole. Therefore, when a suit is filed against a board member for actions taken by the collective—or even actions taken individually if the individual held properly delegated authority—it is against the entity, not against the board member in his or her personal capacity.

Additionally, when someone seeks to sue the library system or one of the library branches, the board, as governing authority is the proper entity to name as a defendant. Therefore, board members may be named as defendants in a civil lawsuit filed by a patron who is injured on the library premises, a dissatisfied employee, a parent wishing to challenge a particular book, special interest groups who oppose library policies, or a vendor claiming breach of contract.

While avoiding legal claims and lawsuits altogether would be optimum, the litigious nature of today's society makes this outcome unlikely. Therefore, library board members must recognize the potential for liability and take steps to minimize the risk by making informed decisions on critical issues.

### **[c] Legal Defenses**

In the event that legal claims are filed against a library board or its members, there are a number of legal defenses that provide immunity to public officials. Trustees may be entitled to invoke these defenses in the event of a lawsuit.

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It is important to note that while the legal defenses detailed below are valuable to governmental entities and officials, they do not prevent lawsuits. These doctrines serve as defenses to be raised in the event of a lawsuit. Therefore, even though one or more of the immunities discussed may be applicable and will allow the library or trustee to ultimately prevail in the suit, there is still the cost and aggravation of litigating the suit until the claims are dismissed by a court.

### **[i] Sovereign Immunity**

Pursuant to the doctrine of sovereign immunity, the state cannot be sued without its consent. Sovereign immunity extends to the state and all of its departments and agencies, including counties. Thus, state entities such as public libraries and their employees are entitled to sovereign immunity unless the immunity is specifically waived by a statute setting forth the extent of the waiver.

Georgia has enacted the Tort Claims Act, which contains a limited waiver of sovereign immunity. The waiver provides:

The state waives its sovereign immunity for the torts of state officers and employees while acting within the scope of their official duties or employment and shall be liable for such torts in the same manner as a private individual or entity would be liable under like circumstances; provided, however, that the state's sovereign immunity is waived subject to all exceptions and limitations set forth in this article. The state shall have no liability for losses resulting from conduct on the part of state officers or employees which was not within the scope of their official duties or employment.

O.C.G.A. § 50-21-23.

Additionally, the State of Georgia has waived sovereign immunity for contract claims. Ga. Const. Art. I, Sec. II, Para. IX(c). Therefore, sovereign immunity will not bar suits against the library system or its board members as to

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torts or contract claims arising from library employees carrying out their official duties.

### **[ii] Official Immunity**

The doctrine of official immunity, which is different from sovereign immunity, may protect board members who are sued for claims arising under state law. Official immunity is limited to state law claims for harm that results from the exercise of discretionary duties. In other words, public officials or employees are immune from liability from state law claims arising from discretionary acts undertaken in the course of their duties which are done without willfulness, malice, or corruption. Ministerial acts are not covered by official immunity. The Georgia Supreme Court defines a ministerial act as one that is simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty; while a discretionary act is one that calls for the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed.

### **[iii] Qualified Immunity**

The doctrine of qualified immunity provides that government officials performing discretionary functions are generally shielded from liability for damages in actions under federal law provided their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The qualified immunity doctrine is intended to strike a balance between compensating those who have been injured by official action and protecting the government's ability to perform its traditional functions. Qualified immunity is

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## Chapter 4: Trustees & Friends

similar to official immunity, the crucial distinction being to which claims it is applicable: qualified immunity shields government officials from claims arising under the United States Constitution or other federal statutes as opposed to official immunity, which bars claims against government officials brought under state law.

### **[d] Ethics**

Public library board members make decisions directly affecting the quality and extent of a community's access to the library's world of information and ideas. Decisions made and policies enacted by library trustees relate to how public monies are spent, what services are most crucial to library users, how citizens interact with their library, and who is most qualified to oversee the operation of the library. Along with the power placed in the hands of public library trustees comes the responsibility to carry out their duties ethically. This is so because board members are acting in the public's interest, not their own. Furthermore, public confidence in the integrity of a governmental body is a valuable commodity; it is also very difficult to regain once lost.

Generally speaking, outright dishonesty is a minor aspect of ethical problems facing public bodies. Instead, ethical dilemmas often fall into the gray area between clearly defined situations of proper and improper behavior. A relationship exists between law and ethics. In some instances, law and ethics overlap. The following concepts of ethics are useful in preempting ethical quagmires for public library trustees.

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### **[i] Improper Economic Benefit**

Board members should refrain from taking any official action that would affect their personal financial interests in a manner distinguishable from the action's effect on members of the public in general; this includes the personal economic interests of close relatives, household members, outside employers, or businesses with which the trustee is affiliated. The removal of a government official from consideration of an issue due to a conflict is referred to as recusal. The disqualified trustee should refrain from participating in any discussion about the matter with other board members, officials, or employees who will make the decision or provide advice relevant thereto. In order to ensure procedural fairness, the recused trustee should leave any portion of a meeting at which the matter is discussed by other decision makers.

### **[ii] Unfair Advancement of Private Interests**

In addition to the avoidance of official actions that affect the economic interests of an individual board member, trustees should not exercise official power to grant any person any form of special advantage beyond what is lawfully available to all persons. This does not mean that no one may be granted a benefit by a public library board (e.g., being hired as the board's outside financial consultant). Rather, it means that board members must ensure that all persons have the right to compete for the benefit on the same terms such as by submitting a bid in a process where all bids will be evaluated on their merits. This ethical tenet promotes the idea that there should be a level playing field in public life and that public business should be conducted in a manner conducive to confidence in government.

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### **[iii] Receipt of Gifts**

There are two dangers created by gifts given to public officials such as library board trustees. One risk is that the gifts will, in fact, distort the discharge of official duties by biasing trustees in favor of the interests of the gift givers. The other danger is that the gifts will be perceived by the public as having a prejudicial effect on the performance of official duties, regardless of whether the discharge of duties is actually affected.

### **[iv] Prohibited Contractual Interests**

Certain ethics codes contain language prohibiting public officials and employees from holding a financial interest in public contracts. These rules go far beyond the improper economic benefit rule. The latter type of rule provides that a public official such as a public library trustee may not take official action economically benefiting him or herself or a closely related person or entity. In contrast, a prohibited contractual interest rule provides, that no public official may consummate a contract in which that official personally holds a financial interest.

### **[e] Unexpired Terms**

When an appointed trustee is unable or unwilling to complete his or her term, often another individual is willing to step in and complete the unexpired term. In this event, a question arises as to whether the fill-in trustee serves for only the time remaining on the departing trustee's term or whether a new term begins with the newly-appointed board member. Georgia's laws pertaining to the creation of public library boards is not specific on this point. Therefore, how to handle unexpired terms is up to individual library boards. But, the law does require that

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trustee terms be staggered. O.C.G.A. § 20-5-42(c). Therefore, in order to maintain the required staggering of terms, best practices would call for the terms to be static and in the event a board member steps down or is removed prior to the end of a term, the new trustee would serve no longer than the remainder of the original term.

### **§ 4.02 Foundational Documents**

The state of Georgia has declared its public policy to be the establishment of public library service throughout the state. O.C.G.A. § 20-5-1. Under state law the authority for governing public libraries is held by a board or boards of trustees. O.C.G.A. § 20-5-41. As with any governing organization, a library board's ability to conduct business begins with its foundational legal documents, the constitution and bylaws. Georgia law explicitly requires all county and regional public library boards to adopt written constitutions and bylaws. O.C.G.A. § 20-5-47. Language in the statute requiring the adoption of a constitution and bylaws is confusing because it that seems to indicate "constitution and bylaws" is a single written document. They are, however, separate and distinct documents.

#### **[a] Constitutions**

The constitution is a short document defining the primary characteristics of the organization; it should describe the library board in general terms including its location, purpose, and the source of the powers of the board to do business. Making the definition and description of the organization broad alleviates frequent need for revision and amendment. Therefore, the procedure for amending a constitution should be somewhat rigorous and require a high level of approval.

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A constitution is divided into Articles and Sections. There is no magic number of Articles and Sections; the length and design of any given constitution is to be tailored to what is necessary to define the organization. Common Article titles for a public library board's constitution are:

- I. Name & Location
- II. Purpose
- III. Governing Authority
- IV. Ability to Contract
- V. Interlibrary Cooperation
- VI. Amendment

### **[b] Bylaws**

Unlike the concise constitution, bylaws prescribe in detail how the library board will be managed. The bylaws are rules with a high level of specificity. Accordingly, the need for flexibility in revising and refining these rules dictates a less stringent amendment process.

The crucial parts to how a library board conducts business must be reflected in the bylaws. Common topics addressed in library board bylaws include: (1) duties of the board's officers, (2) the library's fiscal year, (3) meetings, (4) committees, and (5) relationship with the library director.

While constitutions are organized by Articles and Section, there is more flexibility in the layout of bylaws. Use of the Article/Section formatting is common in bylaws, but a less formal numbering system works just as well. What is important for organizational purposes is that bylaws be divided into identified topics

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with the applicable rules contained therein. Ease of citation should be a factor in the organizational plan as well.

In drafting and revising a constitution and a set of bylaw, board members must give consideration to their library system's unique mission, vision, and demographic attributes. A set of bylaws for a public library board should not to repeat information that is contained in the board's constitution. The constitution and bylaws are companion documents and do not overlap.

### **[c] Currency**

Public library boards must undertake periodic review of their governing documents. Such a review will begin as an analysis of the current documents with an eye toward removing provisions that are no longer applicable and addressing any new procedures or issues that have arisen in the library system. For example, the board must identify processes that are currently in place but are not accurately reflected in the governing documents. For more guidance, refer to the *Constitutions and Bylaws for Georgia Public Libraries: a Handbook for System Directors and Library Administrators*, 2013 available at [http://www.georgialibraries.org/dir\\_mtg/minor-documents.php](http://www.georgialibraries.org/dir_mtg/minor-documents.php). Another source for details to address in a constitution and set of bylaws will be documents adopted by other public libraries. The goal of the board in reviewing its governing documents is to create an up-to-date constitution and set of bylaws that are sufficiently detailed about the process of governing the library such that strangers could walk into the organization and maintain the current governing system by simply following the constitution and bylaws.

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### § 4.03 Public Access

Public libraries in Georgia are entities of state government. As such, they are subject to the state's Open Meetings Act and Open Records Act. Understanding these laws and their applicability to public libraries is important for trustees.

The concepts of freedom of information and public access stem from the United States' democratic form of government. A democratic government assumes that those who elect public officials will have free access to what those public officials are doing. Access to government meetings and records provides citizens with the information they need to participate in the democratic process and to insist that government officials are held accountable for their actions.

#### [a] Historical Perspective

*See Chapter 5: Open Meetings/Open Records, Historical Perspective at § 5.01.*

#### [b] Meetings

Georgia's Open Meetings Act (O.C.G.A. §§ 50-14-1 – 50-14-16) applies to meetings of the governing authority of every "agency" including every county, municipal corporation, school district, and other political subdivision of the state and any committee of an agency. The law defines "meeting" as the gathering of a quorum of the members of the governing body or any of its committees where official business is considered. Therefore, meetings of a public library's board of trustees and its committees are required to be open to the public.

The law does not cover: inspections of physical facilities or property, state-wide meetings or training sessions, meetings with other agencies, travel, and

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social or ceremonial events. No official business is permitted at these gatherings, however.

### **[i] Basis for Closing**

*See Chapter 5: Open Meetings/Open Records, Executive Session, Basis for Closing at § 5.15 [a].*

### **[ii] Procedure for Closing**

*See Chapter 5: Open Meetings/Open Records, Executive Session, Procedural Requirements at § 5.15 [b].*

### **[iii] Voting in Closed Meeting**

*See Chapter 5: Open Meetings/Open Records, Executive Session, Voting at § 5.15 [c].*

### **[iv] Public Notice of Regular Meetings**

*See Chapter 5: Open Meetings/Open Records, Notice at § 5.12.*

### **[v] Publication of Meeting Agenda**

*See Chapter 5: Open Meetings/Open Records, Publication of Agenda at § 5.13.*

### **[vi] Meeting Minutes**

*See Chapter 5: Open Meetings/Open Records, Minutes: Content & Availability at § 5.14.*

### **[vii] Attendance & Proxy Voting**

The General Assembly has approved of certain governmental meetings being held by teleconference. However, in 2012, the legislative body amended the law on teleconferences specifying that an agency without state-wide jurisdiction may conduct public meetings by teleconference only under “emergency conditions” or

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## Chapter 4: Trustees & Friends

when a participant cannot attend in person because of health reasons or absence from the jurisdiction. Therefore, except for instances described in these limited situations, public library board members must attend meetings in person.

In the event that a public library trustee cannot attend a library board meeting, he or she may ask to vote on board business via proxy. Georgia's law setting forth the duties and responsibilities of library board members requires that trustees attend board meetings. O.C.G.A. § 20-5-43(3). The law does not address whether a board member who is absent from a meeting can use a proxy to vote on matters that come before the board during the meeting. Therefore, whether proxy voting will be allowed is a matter of policy to be decided by individual library boards. In the event that a library board opts to allow proxy voting, the precise procedure for doing so should be detailed in the bylaws. As set forth above, Georgia law does require board members to attend meetings; the statute does not state that a trustee must attend all board meetings. But, O.C.G.A. § 20-5-42(d) does provide that a board member will be removed "for failure to attend three consecutive meetings." Therefore, any provision for proxy voting should reference the consequences of missing three consecutive meetings.

### **[viii] Non-Compliance with Open Meetings Law**

*See Chapter 5: Open Meetings/Open Records, Non-compliance with Open Meetings Act at § 5.18.*

## Chapter 4: Trustees & Friends

### **[c] Records**

#### **[i] Definition of Public Record**

*See* Chapter 5: Open Meetings/Open Records, Definition of Public Record at § 5.31 [a].

#### **[ii] Text Message & Emails**

*See* Chapter 5: Open Meetings/Open Records, Definition of Public Record at § 5.31 [c].

#### **[iii] Receiving and Responding to Open Records Requests**

*See* Chapter 5: Open Meetings/Open Records, Responding to Open Records Requests § 5.32.

#### **[iv] Invoking an Exception to the Law**

*See* Chapter 5: Open Meetings/Open Records, Notice of Exceptions at § 5.32 [c].

#### **[v] Non-compliance**

*See* Chapter 5: Open Meetings/Open Records, Non-Compliance § 5.33 [a].

### **B. Supporting Public Libraries in Georgia: Friends Groups**

Fundraising for public libraries is usually conducted by a Friends of the Library group. This could be a single event to generate funds for a specific item for the library or an ongoing major campaign to assist the library with large expenditures.

#### **§ 4.11 Collection of Sales Tax**

Pursuant to Georgia law, “sales to or by an organization whose primary purpose is to raise funds for books, materials, and programs for public libraries

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when qualifying as nonprofit by the Internal Revenue Service” are exempted from payment or collection of sales tax. The organization must apply for this exemption by letter to the Georgia Department of Revenue.

To qualify as a non-profit organization under the regulations of the Internal Revenue Service (“IRS”), the group must (1) be organized exclusively for charitable, religious, educational, scientific, or literary purposes, (2) meet organizational and operational tests, (3) not make payments to private individuals beyond reasonable costs for goods and services, and (4) follow IRS restrictions on lobbying. The organizational test requires the use of key provisions within the articles of incorporation regarding activities for an exempt purpose and the dedication of corporate assets. The operational test requires that the organization engage only in activities intended to accomplish one or more of the purposes set out in subsection one.

A Friends of the Library group is not automatically afforded Section 501(c)(3) status; the organization must apply in writing to the IRS. For more information on the application process, *see* IRS Publication 557, Tax Exempt Status for Your Organization (accessed April 3, 2018 at <http://www.irs.gov/pub/irs-pdf/p557.pdf>).

### **§ 4.12 Applicability of Georgia’s Open Meetings Act**

Georgia’s Open Meetings Act applies to meetings of the governing authority of every “agency” including every county, municipal corporation, school district, or other political subdivision of the state and any committee of an agency. O.C.G.A. § 50-14-1(a)(1). A Friends group is a non-profit entity established to advocate on behalf of the library and raise money for the library. It consists of community

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members and is not a part of library governance. The group has no policy-making role. Therefore, a Friends meeting is not covered by the Open Meetings Act.

Of course, the library board is the governing authority of the public library, and, therefore, its meetings are without doubt subject to the Open Meetings Act. Therefore, attendance of a Friends meeting by board members could transform it into a meeting of the board. The law defines “meeting” as the gathering of a quorum of the members of the governing body or any of its committees where official business is considered. O.C.G.A. § 50-14-1(a)(3)(A).

If a Friends group organized a meeting of local legislators, including the entire county commission, to build good will and inform legislators of library needs, there would a quorum of members of the commission present. Arguably, the quorum of members in this example--the commissioners--is not considering official business of the commission and thus the meeting would not become an official commission meeting. However, under a strict interpretation of the language of the statute, a challenge could be raised.

Efforts by the Friends group to comply with the commission’s duties under the open meetings laws such as advertising and publishing an agenda would be problematic. This is because in reality the gathering at issue is not a commission meeting. It is a meeting between the Friends Group (not subject to the open meetings laws) and elected officials (who are subject to open meetings law). Moreover, even if a challenge is raised, it is the entity that is subject to the Open Meetings Act that would be challenged here, not the Friends group.

## Chapter 4: Trustees & Friends

### C. Additional Resources

Minor, M. A., & Georgia Public Library Service. (2012). *Constitutions and Bylaws for Georgia Public Libraries: A Handbook for System Directors and Library Administrators*, pp. 5-8. Accessed April 4, 2018 at [http://www.georgialibraries.org/lib/publiclibinfo/Constitutions\\_Bylaws-ga-pub-libs-02-2012.pdf](http://www.georgialibraries.org/lib/publiclibinfo/Constitutions_Bylaws-ga-pub-libs-02-2012.pdf). Hard copies are also available through PINES (call number 027.4758 M6662).

Georgia Public Library Service, “Policies for Public Library State Grants Program,” March 2015 at ¶ 1.4. Accessed April 3, 2018 at [http://www.georgialibraries.org/lib/stategrants\\_accounting/policies-library-state-grants-program2015-05082015.pdf](http://www.georgialibraries.org/lib/stategrants_accounting/policies-library-state-grants-program2015-05082015.pdf).

IRS Publication 557, *Tax Exempt Status for Your Organization*. Accessed April 7, 2018 at <http://www.irs.gov/pub/irs-pdf/p557.pdf>.

**CHAPTER 5: OPEN MEETINGS/OPEN RECORDS**

**§ 5.01 A. Historical Perspective**

**B. Public Library Board Meetings**

§ 5.11 [1] Type of Meetings Subject to Open Meetings Act

§ 5.12 [2] Notice

§ 5.13 [3] Publication of Meeting Agenda

§ 5.14 [4] Minutes: Content & Availability

§ 5.15 [5] Executive Session (Closed Meeting)

[a] Basis for Closing

[i] Litigation

[ii] Acquisition of Real Estate

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**C. Library Records**

§ 5.31 [1] Type of Records Subject to Open Records Act

[a] Public Record Defined

[b] Personnel Records

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§ 5.32 [2] Responding to Open Records Requests

[a] Timeframe

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[c] Notice of Exceptions

[d] Form of Request

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[f] Permitted Charge & Prepayment

§ 5.33 [3] Non-Compliance

§ 5.34 [4] Confidentiality of Patron Records

**D. Additional Resources**

## Chapter 5: Open Meetings/Open Records

Public libraries in Georgia are entities of state government. As such, they are subject to the state's Open Meetings Act and Open Records Act. While compliance with these laws may seem tedious or burdensome, the underlying goals of open government laws coincide almost directly with principle tenet of the "library faith"—the belief that public libraries provide crucial support in celebrating and preserving democratic society. Of course, there will abusers and individuals who utilize these laws for purposes of harassment. Nevertheless, the shared ideals of public librarians and those who promote open access to government information make understanding and complying with the state's open government statutes a foremost concern to those who administer, govern, and manage public libraries.

### **§ 5.10 A. Historical Perspective**

The concepts of freedom of information and public access stem from America's democratic form of government. A democratic government assumes that those who elect public officials will have free access to what those public officials are doing. Access to government meetings and records provides citizens with the information they need to participate in the democratic process and to insist that government officials are held accountable for their actions.

In 1976, the federal government enacted the Sunshine Act, which established a presumption that government information is open to the public unless expressly excluded by provisions in the law. 5 U.S.C. § 552(b). Today all fifty states have passed open government laws.

Georgia's initial open meetings law was enacted in 1972, prior to its federal counterpart, and the state's first open records law dates back to 1959. Georgia's

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## Chapter 5: Open Meetings/Open Records

General Assembly demonstrated a commitment to open government in 1998 when it amended the access laws to place enforcement power in the hands of the Georgia Attorney General. In 2012, the legislature again amended the open meetings and open records laws for the purpose of promoting compliance by making the requirements clearer and easier to understand.

### **B. Public Library Board Meetings**

#### **§ 5.11 Type of Meeting Subject to Open Meetings Act**

Georgia's Open Meetings Act applies to meetings of the governing authority of every "agency" including every county, municipal corporation, school district, or other political subdivision of the state and any committee of an agency. O.C.G.A. § 50-14-1(a)(1). The law defines "meeting" as the gathering of a quorum of the members of the governing body or any of its committees where official business is considered. O.C.G.A. § 50-14-1(a)(3)(A). Therefore, meetings of the public library's board of trustees and committees thereof are covered.

Events where board members are present that are social, ceremonial, or civic in nature are not "meetings" for purposes of the Open Meetings Act. O.C.G.A. § 50-14-1(a)(3)(B). Additionally, gatherings of board members for training or to inspect physical facilities or property are not "meetings" under the law. Board members should take care, however, that no official business, policy, or public matter is considered during these informal gatherings. Presumably because agencies have abused these exclusions to evade the requirements of the Open Meetings Act, the General Assembly specifically stated that the "exclusions from the definition of the term meeting shall not apply if it is shown that the primary purpose of the gathering

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## Chapter 5: Open Meetings/Open Records

or gatherings is to evade or avoid requirements for conducting a meeting while conducting official business.” O.C.G.A. § 50-14-1(a)(3)(B).

### **§ 5.12 Notice Required**

Notice of the time, place, and date of any regular meeting must be given to the general public at least one week in advance. O.C.G.A. § 50-14-1(d)(1). The notice should be posted in a conspicuous place at the regular meeting place of the library board as well as on the library’s website. While not specifically required by the statute, providing notice to the media is a good idea.

Special meetings can be held with at least twenty-four hours’ notice. O.C.G.A. § 50-14-1(d)(2). Unlike regular meetings, special meetings require immediate notification to the county’s “legal organ.”

Under certain circumstances, a special meeting may be held without twenty-four hours’ notice. O.C.G.A. § 50-14-1(d)(3). However, notice to the legal organ is required and must include the reason for holding the meeting with less than twenty-four hours’ notice.

### **§ 5.13 Publication of Meeting Agenda**

An agenda of all matters expected to come before the board must be made available upon request and must be posted at the meeting site as far in advance as is practicable during the two weeks prior to the meeting. O.C.G.A. § 50-14-1 (e)(1). Even if a particular issue is not included on the posted agenda it may still be considered by the board if it is deemed necessary to address it. Agendas for meetings should be specific enough to advise the public of the matters expected to come before the board.

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## Chapter 5: Open Meetings/Open Records

### **§ 5.14 Minutes: Content and Availability**

Summary minutes, final minutes, and executive session minutes are required for every meeting, including committee meetings. O.C.G.A. § 50-14-1(e)(2).

Summary minutes must contain a list of the subjects acted on and those members present at the meeting and must be made available to the public for inspection within two business days of the adjournment of a meeting. O.C.G.A. § 50-14-1(3)(2)(B). Final minutes must state what agency members were present, describe each motion, state who made and seconded a motion, and record all votes. If the vote is not unanimous, the votes of the participants must be recorded.

For emergency meetings (i.e., meetings with less than twenty-four hours' notice), the minutes must describe the notice given and the reason for the emergency. O.C.G.A. § 50-14-1(d)(3).

Meeting minutes must also show executive sessions. Executive session minutes are not released to the public. They are used in court if there is a dispute. O.C.G.A. § 50-14-1(e)(2)(C).

### **§ 5.15 Executive Session (Closed Meeting)**

#### **[a] Basis for Closing**

Although there are numerous exceptions to the requirements of the open meetings law, there are three primary reasons why a library board would lawfully hold a closed meeting. These reasons are: (1) to discuss pending or potential litigation with legal counsel; (2) to discuss the acquisition of real estate by the library; or (3) to discuss hiring, compensation, evaluation, or disciplinary action for a specific public officer or employee. O.C.G.A. § 50-14-3. These exceptions to the Open

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## Chapter 5: Open Meetings/Open Records

Meetings Act, particularly for discussion of litigation and to deliberate on personnel matters, are well known to board members and frequently utilized. O.C.G.A. §§ 50-14-2 and 50-14-3. It is important to understand, however, that a closed meeting, known as an executive session, must arise from a properly noticed open meeting. Even if the board intends to meet to discuss only a pending lawsuit with its attorney, the meeting must begin as an open meeting with proper notice. A vote to convene an executive session must take place during the open portion of the meeting.

### [i] Litigation

The attorney-client privilege allows the library board to meet with its attorney to discuss pending or potential lawsuits or claims against or by the library in a closed meeting. Two things must be considered before closing a meeting pursuant to the attorney-client privilege. First, the attorney representing the library in the pending or potential lawsuit **must be present**. Second, a lawsuit by or against the library must already be filed, or there must be a tangible likelihood of a lawsuit being filed. A mere threat to take legal action against the library is not enough to close a meeting to discuss a potential lawsuit. In order to determine whether a threat to sue the library is a potential lawsuit that may be discussed in an executive session, board members should ask the following questions:

- Is there a formal demand letter or something else in writing that presents a claim against the library and indicates a sincere intent to sue?
- Is there previous or preexisting litigation between the library and the other party or proof of ongoing litigation on similar claims?

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- Is there proof that the other party has hired an attorney and expressed intent to sue?

The mere presence of counsel at a meeting is not a basis for closure.

Additionally, the meeting may not be closed to receive legal advice on whether a topic may be discussed in a closed meeting.

### **[ii] Acquisition of Real Estate**

Board members may close a meeting to discuss the purchase of real estate by the library. The exception applies only when the library acquires property, not when it sells property. Additionally, it applies only when the library is purchasing real property. The exemption does not apply when the library purchases property, such as vehicles, equipment, or supplies.

### **[iii] Employment**

Board members may close the portion of the meeting during which they are deliberating on hiring, appointing, compensating, disciplining, or dismissing an employee. O.C.G.A. § 50-14-3(b)(2). However, any portion of a meeting during which the board receives evidence or hears arguments involving disciplinary actions must be open. The meeting may be closed to interview applicants for the position of library director. Note, however, that records identifying persons who have applied for or are under consideration for employment as library director are subject to inspection and copying at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position. O.C.G.A. § 50-18-72(a)(11). Moreover, all documents concerning as many as three persons under consideration whom the

## Chapter 5: Open Meetings/Open Records

board has determined to be the best qualified for the position shall be subject to inspection and copying. O.C.G.A. § 50-18-72(a)(11).

### **[b] Procedural Requirements**

All executive sessions must take place within a properly advertised open meeting. O.C.G.A. § 50-14-4. Going into executive session requires a vote. The regular minutes must show the specific reason for closing the meeting, those present, and those voting for closing the meeting. Going into executive session also requires the board chair to execute a sworn affidavit showing the basis for the executive session and that the closed part of the meeting was limited to the identified activity. O.C.G.A. § 50-14-4(b)(1). For model affidavit, *see* Fig. 1. The chair has the duty to keep the meeting limited to the proper purposes of the closed meeting, and, if it is not, to adjourn the closed meeting. O.C.G.A. § 50-14-4(b)(2).

Only those with an actual “need to know” should attend the closed portion of the meeting. If a session is closed, it must be closed to everyone not necessary to consideration of the subject of the closed meeting. *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994).

## Chapter 5: Open Meetings/Open Records

Fig. 1

<p style="text-align: center;"><b>MODEL EXECUTIVE SESSION AFFIDAVIT</b></p> <p style="text-align: center;">[A copy of the affidavit must be filed with the minutes of the open meeting]</p> <p style="text-align: center;">_____ PUBLIC LIBRARY BOARD OF TRUSTEES</p> <p style="text-align: center;">AFFIDAVIT OF PRESIDING OFFICER</p> <p>_____, Chair/President of the _____ Public Library Board of Trustees, being duly sworn, states under oath that the following is true and accurate to the best of his/her knowledge and belief:</p> <p>1. The _____ Public Library Board of Trustees met in a duly advertised meeting on _____, 20____.</p> <p>2. During such meeting, the Board voted to go into executive session.</p> <p>3. The executive session was called to order at _____ a.m./p.m.</p> <p>4. The subject matter of the closed portion of the meeting was devoted to the following matter(s) within the exceptions provided in the open meetings law:</p> <p>_____ Consultation with the board or library's attorney to discuss pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the board, the library, any board officer/library employee or in which the library, or any board officer/library employee may be directly involved as provided in O.C.G.A. § 50-14-2(1);</p> <p>_____ Voting on settlement of pending or potential litigation O.C.G.A § 50-14- 1(b)(1)(A);</p> <p>_____ Discussion or voting on authorizing negotiations to purchase, dispose of, or lease property as provided in O.C.G.A. § 50-14-3(b)(1)(B);</p> <p>_____ Discussion or deliberation on the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a library employee as provided in O.C.G.A. §50-14-3(b)(2).</p> <p>_____ Interviewing candidates for library director as provided in O.C.G.A, §50-14-3(b)(2);</p> <p>5. _____ During the course of the closed session devoted to exempt topics, an incidental remark regarding a non-exempt topic or an attempt to discuss a non-exempt topic was made.</p> <p>_____ The attempt was immediately ruled out of order and the attempt to discuss same ceased immediately.</p> <p>_____ The attempt was immediately ruled out of order. However, the comments did not cease, so the closed/executive session was immediately adjourned without discussion or action being taken regarding any non-exempt topic.</p> <p>6. Minutes were taken of this meeting and will be filed and held for in camera inspection only.</p> <p>This _____ day of _____, 20_____.</p> <p>_____, Chair/President</p> <p>_____ Public Library Board of Trustees</p> <p>Sworn to and subscribed</p> <p>Before me this _____ day of _____, 20____.                      My commission expires:</p> <p>_____</p> <p>Notary Public</p>	
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## Chapter 5: Open Meetings/Open Records

### [c] Voting

Votes may be taken in certain properly convened executive sessions. However, any vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, is not binding until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote. Voting on all personnel matters must be in an open meeting. O.C.G.A. § 50-14-3(b)(1) & (2).

### § 5.16 In-Person Attendance

The General Assembly has approved of certain governmental meetings being held by teleconference. O.C.G.A. § 50-1-5(a). Prior to the 2012 amendments to the Open Meetings Act, that statute seemed to be applicable to public library boards. The new law specifies, however, that an agency without state-wide jurisdiction may conduct public meetings by teleconference only under “emergency conditions” or when a participant cannot attend in person because of health reasons or absence from the jurisdiction O.C.G.A. § 50-14-1(g). Therefore, except for instances described in these limited situations, board members must attend meetings in person.

For discussion on Proxy Voting, *see* Chapter 4: Trustees & Friends: Attendance & Proxy Voting at § 4.03 [b] [iv].

### § 5.17 Public Comment

Often, citizens wish to speak or make presentations during library board meetings. Georgia’s Open Meetings Act does not require the board to allow public

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## Chapter 5: Open Meetings/Open Records

participation in the meeting. The law requires that the public be given access to the meeting and be allowed to make sound or visual recordings. O.C.G.A. § 50-14-1(c).

Whether a library board will allow public comment and what time limitations apply should be addressed in the library's bylaws.

### **§ 5.18 Non-Compliance**

Georgia's Attorney General has the power to enforce open meetings laws in civil or criminal actions. The stated goal of the Attorney General's office is to obtain compliance, not to sanction. Nevertheless, violations of the law can lead to a \$1,000 fine for a first violation and a \$2,500 fine for each additional violation within twelve months. O.C.G.A. § 50-14-6. The standard for a civil violation is negligence. The standard for a criminal violation (a misdemeanor) is willfulness.

Citizens can also bring civil actions in superior court in order to obtain compliance with the law, and a violator may be found liable for that citizen's attorney's fees.

### **C. Library Records**

#### **§ 5.31 Types of Records Subject to Open Records Law**

##### **[a] Public Record Defined**

“Public record’ means all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.” O.C.G.A. § 50-18-70(b)(2).

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### **[b] Personnel Records**

Library personnel records are subject to disclosure pursuant to the Open Records Act. Any exempt material in personnel files, such as social security numbers, medical information, home address and telephone number, or information relating to the designation of beneficiaries, may be redacted. O.C.G.A. § 50-18-72(a)(20)(A).

### **[c] Text Messages and Email**

Georgia's Open Records Act applies to electronic data including emails and text messages. O.C.G.A. §§ 50-18-71(g) and (h). While the statute does not specify, the Georgia Attorney General's office takes the position that all email and text messages concerning the agency's business are open regardless of whether they were generated from a personal account. Likewise, according to the Attorney General's office, all email and text messages created or kept on the library's equipment or devices are subject to disclosure regardless of subject matter.

## **§ 5.32 Responding to Open Records Requests**

### **[a] Timeframe**

Documents that are available must be produced within three business days from the request. If the requested documents exist but are not available for production within three days, the library must provide to the requester (within the three-day window) a description of the records and a timetable for when the records will be available for inspection or copying. O.C.G.A. § 50-18-71(b)(1)(A). For sample three-day letter, *see* Fig. 2.

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## Chapter 5: Open Meetings/Open Records

### **[b] Documents that Do Not Exist**

The library is not required to prepare any reports, summaries, or compilations that are not in existence at the time of the request. O.C.G.A. § 50-18-71(b)(1)(A). However, requests may be made for documents that do not currently exist but will exist in the future. For example, if an individual requests copies of minutes of future board meetings, the board would be obliged to provide copies of the minutes as they come into existence.

In addressing requests for electronic data, the library may not refuse to produce on the grounds that exporting data or redaction of exempted information will require inputting range, search, filter, report parameters, or similar commands or instructions into the library's computer system if these commands or instructions can be executed using existing computer programs that the library uses in the ordinary course of business to access, support, or otherwise manage the records or data. O.C.G.A. § 50-18-71(f).

### **[c] Notice of Exceptions**

The library's decision-maker must determine whether the requested documents are subject to an exception to the open records law. The exceptions are too numerous to list here but can be found at O.C.G.A. § 50-18-72, *see* App. B at pp. 388-404. In making a determination on the applicability of an exception to the Open Records Act, the library decision maker should give careful consideration to the request, keeping in mind that the rule is that the record is open; the exceptions for not having to release a document are construed narrowly.

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Once it has been determined that all or part of a document falls under one of the legal exceptions, the library must provide, in writing, the specific legal authority excepting the record from disclosure by code section, subsection, and paragraph. O.C.G.A. § 50-17-71(d). If a requested document contains both open and excepted information, the records custodian must still release the document but may redact or mark out the excepted information. O.C.G.A. § 50-18-72.

### **[d] Form of Request**

The Open Records Act provides that requests may be made orally or in writing (including email and fax). O.C.G.A. § 50-18-71(b)(1)(B). However, in order for the enforcement provisions of the Act to be available to compel compliance and punish non-compliance, a request must be made in writing. O.C.G.A. § 50-18-71(b)(3).

A Georgia library director recently was contacted and asked to whom within the library system records requests for electronic records should be made. The request went on to indicate that the requester was specifically interested in all inter-staff e-mail that has been sent in the last six months.

Vague or compound requests like this one may be challenging to address. The recipient should carefully review the request to ascertain what is being sought. This example is quite simple—the requester is seeking the name of the person who is responsible for electronic records requests. The Open Records Act provides,

A request made pursuant to this article may be made to the custodian of a public record orally or in writing. An agency may, but shall not be obligated to, require that all written requests be made upon the responder's choice of one of the following: the agency's director, chairperson, or chief executive officer, however denominated; the

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senior official at any satellite office of an agency; a clerk specifically designated by an agency as the custodian of agency records; or a duly designated open records officer of an agency . . . .

O.C.G.A. § 51-18-71(B)(1)(b). The response to this inquiry is nothing more than the name of an individual.

The request received by the director indicates, however, that much a more complicated request is to come. No action should be taken until the request is actually made. It is possible that the requester will be more specific when lodging his or her official records request.

If the request that is ultimately received is as broad as “all inter-staff emails within the last six months,” the library should estimate the search, retrieval, redaction, and copy costs for such an undertaking. O.C.G.A. § 51-18-71(c)(1) and (2). If the estimate exceeds \$500, the library may insist on prepayment. O.C.G.A. § 50-18-71(d). *See Permitted Charge and Prepayment at § 5.32 [f].*

Another option for addressing a vague or overly broad request is to seek clarification from the requester. In many instances, the requester may not appreciate the volume of records that may be responsive to his or her request.

If the library has an Open Records Officer, the library can require that all requests be made in writing to this designated officer. O.C.G.A. § 50-18-71(b)(2).

### **[e] Open Records Officer Not Required**

The library may, but is not required to, designate an employee to act as the Open Records Officer. O.C.G.A. § 50-18-71(b)(1)(B). If the library elects to designate an Open Records Officer, the designation must be in writing, the legal organ in the

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county of the library's principal office must be notified, and the library must prominently display the designation on its website. O.C.G.A. § 50-18-71(b)(2).

If the library has an Open Records Officer, the three-day time period to respond to requests does not begin to run until a written request is made to this individual. O.C.G.A. § 50-18-71(b)(2). The unavailability of the Open Records Officer, however, is not permitted to delay the agency's response. O.C.G.A. § 50-18-71(b)(1)(B).

Fig. 2

### MODEL RESPONSE TO OPEN RECORDS REQUEST (THREE-DAY LETTER)

Date (To be sent within three business days of the request for record)

Dear \_\_\_\_\_ (Requester):

I received your [verbal/written] open records law request on \_\_\_\_\_ (date) to review \_\_\_\_\_ public library documents. After reviewing your request, it has been determined that:

\_\_\_ All of the documents that you requested are required to be released under the open records law.

\_\_\_ [Portions of the/The] documents that you requested are not required to be released because the fall into an exception provided by law, \_\_\_\_\_ (include applicable legal authority for such exemption with code section, subsection and paragraph).

\_\_\_ The documents that you requested do not exist.

The [portion of the documents subject to release/documents] are available at this time. Please come to the [circulation desk/reference desk/office of the director] of the \_\_\_\_\_ Public Library [during normal business hours/on \_\_\_\_\_ date/Please call \_\_\_\_\_ at \_\_\_\_\_ to set up a convenient appointment].

If you still desire access to these documents, please sign and date the bottom portion of this letter and return it to my office.

As provided by O.C.G.A. § 50-18-71, the estimated cost to search, retrieve, copy, redact, and supervise access to the requested documents is \$\_\_\_\_\_. This fee includes a charge of \$\_\_\_\_\_

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per hour to cover the administrative costs of assisting you with your request (e.g., staff time searching for, retrieving, copying the requested documents, supervision of the access, etc.) to access library records as authorized by O.C.G.A. § 50-18-71. This fee represents the hourly rate of the lowest paid full-time employee with the necessary skill and training to respond to your request. There is no charge for the first fifteen minutes. Should you need copies of any of the requested records, the charge is 10¢ per page for letter or legal sized documents. You will be charged the actual cost for non-standard documents or electronic media. Additionally, higher fees may be charged for certified copies or other specialized records, if provided by law. At this time, there appear to be approximately \_\_\_\_ pages of documents responsive to your request that are subject to release under the open records law.

Please sign and date below acknowledging that you understand the administrative and copying costs are your responsibility. Please return a copy of this letter to my office prior to reviewing the documents.

Sincerely,

\_\_\_\_\_  
Public Library [Records Custodian/Director]

I agree to pay all copying and/or administrative costs incurred in fulfilling my open records request.

\_\_\_\_\_  
Requester

\_\_\_\_\_  
Date

### **[f] Permitted Charge & Prepayment**

If the projected cost to produce requested documents exceeds \$25, the library must provide an estimate of any copying/administrative charges for responding to the request. O.C.G.A. § 50-18-71(d). The library must notify the requestor of the estimated charge prior to fulfilling the request.

The library may collect a uniform copying fee of up to ten cents per page for letter- or legal-sized copies. O.C.G.A. § 50-18-71(c)(2). For the production of electronic records, the library may charge the actual cost of the media on which the records are produced.

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Reasonable charges for search, retrieval, and other direct administrative costs may be collected. O.C.G.A. § 50-18-71(c)(1). However, the hourly charge shall not exceed the salary of the lowest-paid full-time employee with the requisite skill and knowledge to perform the request, and there may be no charge for the first fifteen minutes of work.

If the estimate of costs to produce requested records exceeds \$500, the library may require prepayment before beginning the search, retrieval, redaction, and copying of records. O.C.G.A. § 50-18-71(d). Also, if a requester has failed to pay legally incurred costs in the past, the library may require prepayment for all future requests until the prior costs are paid or the dispute regarding the prior payment is resolved.

Public libraries may be a place where the county “posts” its budget for public review. If so, the question may arise as to whether the library is limited to a copy charge of ten cents per page as required by the 2012 Open Records Act, or whether the library may charge its standard copy rate (which is likely higher than ten cents per page) for making copies of the county’s budget. This issue has not been addressed by the Attorney General’s office or a Georgia court. There are valid arguments to be made on both sides of the issue. However, two factors weigh in favor of following the ten-cent requirement. First, the statute identifying public records includes “all documents . . . received by an agency . . . .” O.C.G.A. § 50-18-70(b)(2). Second, the law itself includes language to indicate that the General Assembly intended it to be broadly construed to allow the access to governmental

## Chapter 5: Open Meetings/Open Records

records. O.C.G.A. § 50-18-70(a). Accordingly, the safest practice would be to err on the side of caution and utilize the copy rate dictated by the 2012 Open Records Act.

The library is authorized to collect document costs in the same manner in which it collects overdue fines or lost book fees. O.C.G.A. § 50-18-71(c)(3).

Additionally, the library may require a requester with an outstanding bill for costs to prepay for future requests. O.C.G.A. § 50-18-71(d).

### **§ 5.33 Non-Compliance**

The Attorney General is authorized to file a criminal action against individuals who violate the Open Records Act. O.C.G.A. § 50-18-73(a). Anyone who knowingly and willfully violates the open records laws, either by refusing access or failing to provide documents within the requisite time, may be found guilty of a misdemeanor and may be subject to a fine not to exceed \$1,000. O.C.G.A. § 50-18-74. Alternatively, a civil penalty may be imposed by the court in any civil action against any person who negligently violates the terms of this article in an amount not to exceed \$1,000.00 for the first violation. O.C.G.A. § 50-18-74. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a twelve-month period from the date the first penalty or fine was imposed. O.C.G.A. § 50-18-74.

As with the open meetings law, the Attorney General or any other person, firm, or corporation may bring a civil action in superior court to require the library to release records, and the library may be obligated to pay the complaining party's attorney's fees if the records custodian acted without substantial justification in denying an open records request. O.C.G.A. § 50-18-73(b).

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### § 5.34 Confidentiality of Patron Records

The Open Records Act provides access to public records. The confidentiality statute pertaining to library records (O.C.G.A. § 24-12-30) states, “Circulation and similar records of a library which identify the user of library materials **shall not be public records** but shall be confidential and may not be disclosed . . . .” Therefore, library records that reveal the name of the library user and the materials he or she has utilized are specifically exempted from the open records law.

#### D. Additional Resources

For online access to the full text of Georgia’s Open Meetings Act and Open Records Act, go to <https://law.georgia.gov/law>.

Association of County Commissions of Georgia. *Georgia’s Open Meetings and Open Records Laws: A Guide for County Officials*, 7<sup>th</sup> Ed. 2016. Accessed April 11, 2018 at <http://accg.org/library/legal/Open%20Meetings%20and%20Open%20Records%20Laws%202016.pdf>.

Georgia Municipal Association. *Georgia in the Sunshine: A Guide to Georgia’s Open Meetings and Open Records Laws for Municipal Officers*, 11<sup>th</sup> Ed. August 2014. Accessed April 11, 2018 at <https://www.gmanet.com/Advice-Knowledge/GMA-Publications/Government-in-the-Sunshine-A-Guide-to-Georgia-s-Op.aspx/>

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## APPENDIX A: MODEL PERSONNEL POLICIES

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MP 605	Outside Employment; Dual Employment
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### **Part 7: Checklists**

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### **References**

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### Introduction

Public libraries in Georgia invest more than two-thirds of their total expenditures in their employees (\$142 million in FY 2017). As a result of investment of public funds at this high level brings with it a responsibility of library administrators to create and maintain stable and functioning workplaces. To fulfill this duty, administrators must be prepared to deal with a wide range of employment issues. Creation and maintenance of policies for how an organization will interact with its employees is a key step in that preparation.

Personnel policies explain the expectations for employees and describe what they, in turn, can anticipate from the library as their employer. Policies should describe the library's legal obligations as an employer and library workers' rights as employees.

While many policies may be simply implied customs or oral recitations of how things are done, current best practices emphasize having written policies to ensure the effective and efficient running of libraries (Larson and Totten, 2004). This appendix aims to guide library administrators in working with their boards to develop, revise, and maintain written personnel policies appropriate for public libraries in Georgia. This document is not a collection of policies that may simply be adopted by individual library systems. Rather it is a reference guide to consult in creating a handbook or manual of specifically tailored policies applicable to an individual library system.

Policies directed toward employment issues fall into numerous categories.

The order of presentation of the policy categories in this appendix is for

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organizational purposes only. Many policies discussed herein overlap categories, and library administrators and board members should focus efforts on content rather than arbitrary groupings and order.

In addition to commentary on considerations for developing and revising specific personnel policies, model policies are included throughout this appendix. In compiling the model policies, various resources were used; many of the examples are combinations of policies drawn from other sources. The References section of this appendix lists the resources consulted.

It is important to remember that the model policies offered are not exhaustive. Moreover, with the exception of a policy on Family and Medical Leave (Model Policy 412, herein), none of the proposed policies is mandatory.

In working with the board to create and revise personnel policies, a library director's primary concerns should be clarity and consistency. Make sure that the policies are easy to understand and apply. Be careful to prevent conflict between policies.

A board committee should be in place to review personnel policies on a regular basis to ensure that they continue to reflect the organization's practices. According to the Georgia Public Library Service's (2015) Public Library Service Standards, this review should occur at least every three years.

Because in most instances, a public library is an element of a municipal governing authority, consideration must be given to the personnel policies of the larger municipal entity. In other words, personnel policies of the library should not conflict with the policies of the entity from which the library is derived.

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Once a public library board has adopted a comprehensive set of personnel policies, it is imperative that the policies be applied consistently. The most carefully drafted and well-reasoned policies are worthless if they are ignored or applied inequitably.

Keep employees informed of policy changes and educate them on how policies are applied. Training should aim to convey to employees the underlying intent of the organization's policies and the ways employees can best abide by policies in doing their jobs and interacting with other employees. Failure to communicate guidelines and any revisions will make it impossible for employees to follow the rules.

### **Part 1: Employer/Employee Relationship**

#### **At-Will**

As a general matter, Georgia is an at-will employment state, which means that absent an employment contract, an employee can be terminated at any time without reason or for any reason so long as it is not an illegal reason such as discrimination or whistle blowing (Wimberly, 2008). The "at-will" relationship should be clearly affirmed and documented through library policy.

#### **Model Policy 101: At-Will Employment**

Employees of the Library are hired "at will" which means employees enter into employment voluntarily and are free to resign at any time for any reason or no reason. Similarly, the Library is free to conclude its relationship with any employee at any time for any reason or no reason.

This Employee Handbook does not create a contract of employment between the Library and its employees. Statements of

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salary in annual, monthly, or weekly intervals are for information purposes and do not create a contract for the specified time. Our relationship remains at will, notwithstanding any provision within the Library's personnel policies. No manager or representative of the Library other than the board as a whole has the authority to enter into any agreement with an employee regarding the terms of employment that changes the at-will relationship or deviates from the provisions within the Library's personnel policies.

As the model policy states, providing an employee with a handbook or collection of personnel policies does not create a contract or otherwise alter the at-will employment relationship. Requiring an employee to sign an acknowledgment that he or she understands that the relationship remains at will is an added level of insurance in the event the employee later becomes dissatisfied and litigious. Furthermore, communication of the organization's policies is a critical prerequisite to enforcement of those policies. Therefore, a signed acknowledgement of receipt of the library's personnel policies is a method by which the library can prove, if ever necessary, that the employee was informed about and provided with the policies. Below is a sample of such acknowledgement form.

MP 102: Sample Acknowledgement Form  
ACKNOWLEDGMENT OF RECEIPT OF \_\_\_\_\_  
LIBRARY PERSONNEL POLICY MANUAL  
**for version dated \_\_\_\_\_, 201\_\_**

By signing below, I acknowledge that I have received a copy of the Library Personnel Policy Manual. I understand that it is my responsibility to read and comply with the policies contained in the Manual as well as any revisions made to it. I also understand that if I need additional information, or if there is anything I do not understand in this Manual, I should contact my immediate supervisor or other appropriate management personnel.

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**I understand that the Library is an “at-will” employer and, as such, employment with the Library is not for any definite period of time and may be terminated at the option of either me or the Library, with or without cause, and with or without prior notice. I also understand that nothing contained in the Manual may be construed as creating a promise of future benefits or a binding contract with the Library for employment, benefits, or any other purpose.**

In addition, I understand that this Manual reflects policies, practices, and procedures in effect on the date of publication and that it supersedes any prior policy manual, handbook, work rules, benefits, and practices of the Library. I further understand that the rules, policies, benefits, and practices referred to in this Manual are continually evaluated and may be modified, reduced, or discontinued at any time by the Library Board, in its judgment and discretion, with or without notice.

SIGNED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Employee signature) (Date signed)

EMPLOYEE NAME: \_\_\_\_\_  
(Print employee's name)

POSITION: \_\_\_\_\_  
(Employee's position)

DEPARTMENT: \_\_\_\_\_

### Part 2: Conditions of Employment

#### Policies against Harassment, Discrimination, & Retaliation

Since the 1960s, the federal government has passed a number of laws protecting employees from discrimination based on factors not directly related to the quality of an individual's work. Employers are responsible for understanding anti-discrimination regulations to ensure employees are protected from discrimination and harassment on the job. The applicable federal laws that apply to a library as an employer are summarized in Chapter 1: Employment, Federal Anti-Discrimination Laws at § 1.24.

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### Model Policy 201: Anti-Discrimination; Anti-Retaliation

In order to provide equal employment and advancement opportunities to all individuals, employment decisions at the Library will be based on merit, qualifications, and abilities. The Library does not discriminate in employment opportunities or practices because of race, color, religion, sex, national origin, age, or disability.

The Library will make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in an undue hardship. This policy governs all aspects of employment, including selection, job assignment, compensation, discipline, termination, and access to benefits and training.

Employees with questions or concerns about discrimination in the workplace are encouraged to bring these issues to the attention of their supervisor. Employees can raise concerns and make reports without fear of reprisal. Anyone found to be engaging in unlawful discrimination will be subject to disciplinary action, including termination of employment.

### Model Policy 202: Sexual Harassment

It is the policy of the Library to provide a place that is comfortable for employees and patrons to work and use library resources. In compliance with applicable federal and state laws, the Library will be a place that is free of any form of harassment, including sexual harassment. Sexual harassment includes unwelcome sexual advances, flirtations, propositions, sexually degrading words to describe an individual, graphic or suggestive comments, or requests for sexual favors. It includes the display in staff work areas of sexually suggestive pictures or objects, including photographs or illustrations of nude or seminude figures. All employees are responsible for assuring that the workplace is free of sexual harassment and should promptly report incidents or possible incidents of sexual harassment to the Library Director. After investigation, any employee found to have engaged in sexual harassment will be subject to disciplinary actions

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that range from counseling and education up to and including termination of employment.

Patrons are not permitted to sexually harass other patrons or staff members. A Library employee may refuse to assist a patron if he or she believes that such assistance will require the employee to view printed or computer screen materials that the employee finds to be offensive or interprets as harassment. The Library employee must immediately ask a supervisor for assistance with the patron's request. Patrons who harass staff or other patrons will be asked to leave the Library, and, if appropriate, their behavior will be reported to the appropriate authorities.

An emerging trend in employment discrimination law is the extension of protection to gender identity. The Equal Employment Opportunity Commission (EEOC) has taken an aggressive position on gender identity under federal law, finding it is protected under Title VII of the Civil Rights Act. Several federal court decisions have found the same, including for example, a recent decision by the federal district court in Arizona, which found with little analysis, that a transgender prison guard is clearly entitled to protection under Title VII. *Doe v. Arizona*, No. CV-15-02399-PHX-DGC, 2016 WL 1089743 (D. Ariz. Mar. 21, 2016). This decision illustrates just how far Title VII jurisprudence has evolved over the past decade.

While at the state level, laws limiting protections for transgender individuals have been debated and even passed by legislatures, federal law supersedes these. An employer may not rely on state law as a defense to a discrimination claim brought under Title VII. Therefore, policies regarding transgender employees may be a necessary addition to library employee handbooks.

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### Model Policy 203: Transgender Employees (Modified sample from The Transgender Law Center)

#### Purpose

The Library does not discriminate in any way on the basis of sex, sexual orientation, gender identity, or gender expression. This policy is designed to create a safe and productive workplace environment for all employees.

This policy sets forth guidelines to address the needs of transgender and gender non-conforming employees and clarifies how the Library will implement applicable law in situations where questions may arise about how to protect the legal rights or safety of such employees. This policy does not anticipate every situation that might occur with respect to transgender or gender non-conforming employees, and the needs of each transgender or gender non-conforming employee must be assessed on a case-by-case basis. In all cases, the goal is to ensure the safety, comfort, and healthy development of all employees.

#### Definitions

The definitions provided here are not intended to label employees but rather to assist in understanding this policy and the legal obligations of the Library. Employees may or may not use these terms to describe themselves.

»» Gender identity: A person's internal, deeply-felt sense of being male, female, or something other or in-between, regardless of the sex they were assigned at birth. Everyone has a gender identity.

»» Gender expression: An individual's characteristics and behaviors (such as appearance, dress, mannerisms, speech patterns, and social interactions) that may be perceived as masculine or feminine.

»» Transgender: An umbrella term that can be used to describe people whose gender identity or expression is different from their sex assigned at birth. Some people described by this definition do not consider themselves transgender – they may use other words, or may identify simply as a man or woman. A person does not need to identify

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as transgender in order for an employer's nondiscrimination policies to apply to him or her.

»» Gender non-conforming: This term describes people who have, or are perceived to have, gender characteristics and/or behaviors that do not conform to traditional or societal expectations. Keep in mind that these expectations can vary across cultures and can change over time.

»» Transition: The process of changing one's gender from the sex assigned at birth to one's gender identity. There are many different ways to transition. For some people, it is a complex process that takes place over a long period of time, while for others it is a process that happens more quickly. Transition may include "coming out" (telling family, friends, and coworkers); changing the name and/or sex on legal documents; and, for many transgender people, accessing medical treatment such as hormones and surgery.

»» Sexual orientation: A person's physical or emotional attraction to people of the same or other gender. Straight, gay, and bisexual are some ways to describe sexual orientation. It is important to note that sexual orientation is distinct from gender identity and expression. Transgender people can be gay, lesbian, bisexual, or straight, just like non-transgender people.

»» LGBT: A common abbreviation that refers to the lesbian, gay, bisexual, and transgender community.

Transgender employees have the right to discuss their gender identity or expression openly, or to keep that information private. Transgender employees get to decide when, with whom, and how much to share their private information. Information about an employee's transgender status (such as the sex assigned at birth) can constitute confidential medical information under privacy laws like HIPAA.

Management, human resources staff, or coworkers should not disclose information that may reveal an employee's transgender status or gender non-conforming presentation to others. That kind of personal or confidential information may be shared only with the transgender

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employee's consent and with coworkers who truly need to know to do their jobs.

### Official Records

The Library will change an employee's official record to reflect a change in name or gender upon request from the employee. Certain types of records, like those relating to payroll and retirement accounts, may require a legal name change before the person's name can be changed.

As quickly as possible, the Library will make every effort to update any photographs at the transitioning employee's workplace so the transitioning employee's gender identity and expression are represented accurately.

### Names/ Pronouns

An employee has the right to be addressed by the name and pronoun that correspond to the employee's gender identity, upon request. A court-ordered name or gender change is not required. The intentional or persistent refusal to respect an employee's gender identity (for example, intentionally referring to the employee by a name or pronoun that does not correspond to the employee's gender identity) can constitute harassment and is a violation of this policy. If you are unsure what pronoun a transitioning coworker might prefer, you can politely ask your co-worker which is preferred.

### Transitioning on the Job

Employees who transition on the job can expect the support of Library administration. Managers or human resources officers will work with each transitioning employee individually to ensure a successful workplace transition.

*[Insert specific guidelines appropriate to your organizational structure here, making sure they address:*

*»» Who is charged with helping a transitioning employee manage his/her workplace transition;*

*»» What a transitioning employee can expect from management;*

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»» *What management's expectations are for staff, transitioning employees, and any existing lesbian, gay, bisexual, transgender (LGBT) employee resource group in facilitating a successful workplace transition; and*

»» *What the general procedure is for implementing transition-related workplace changes, such as adjusting personnel and administrative records, and developing an individualized communication plan to share the news with coworkers and clients.]*

### Sex-segregated job assignments

For sex-segregated jobs, transgender employees will be classified and assigned in a manner consistent with their gender identity, not their sex assigned at birth.

### Restroom Accessibility

Employees shall have access to the restroom corresponding to their gender identity. Any employee who has a need or desire for increased privacy, regardless of the underlying reason, will be provided access to a single-stall restroom, when available. No employee, however, shall be required to use such a restroom.

All employees have a right to safe and appropriate restroom facilities, including the right to use a restroom that corresponds to the employee's gender identity, regardless of the employee's sex assigned at birth.

### Dress Code

The Library does have a dress code, but no dress code will restrict an employee's clothing or appearance on the basis of gender. Transgender and gender non-conforming employees have the right to comply with the Library's dress code in a manner consistent with their gender identity or gender expression.

### Discrimination/ Harassment

It is contrary to the Library's policy to discriminate in any way (including, but not limited to, failure to hire, failure to promote, unwarranted discipline, or unlawful termination) against an employee because of the employee's actual or perceived gender identity.

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Additionally, it is contrary to this policy to retaliate against any person objecting to, or supporting enforcement of legal protections against, gender identity discrimination in employment.

The Library is committed to creating a safe work environment for all employees, including transgender and gender non-conforming employees. Any incident of discrimination, harassment, or violence based on gender identity or expression will be given immediate and effective attention, including, but not limited to, investigating the incident, taking suitable corrective action, and providing employees with appropriate resources.

### **Employee Safety**

All employees have the right to a safe workplace. The Occupational Safety and Health Act of 1970 was passed to prevent workers from being killed or otherwise harmed at work. 29 U.S.C. § 651 *et seq.* The law requires employers to provide their employees with working conditions that are free of known dangers. That Act created the Occupational Safety and Health Administration (OSHA), which sets and enforces protective workplace safety and health standards. OSHA also provides information, training, and assistance to employers and workers.

Establishing the library's dedication to workplace safety and security through written policy is recommended. Furthermore, tailoring the policy to address concerns that are specific to your facilities and workplace environments will increase the likelihood of maintaining your library as a safe and secure workplace.

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### Model Policy 204: Workplace Safety

It is the policy of the Library that every employee is entitled to work under the safest conditions reasonably possible. Every reasonable effort will be made to provide and maintain a safe and healthy workplace, safe equipment, and proper materials, and to establish and insist upon safe methods and practices at all times. It is the basic responsibility of every employee to make safety a part of the daily concern. Employees are obligated to observe all guidelines governing safety and appropriate conduct, to properly use the safety equipment provided, and to follow common-sense safety practices.

Following Safety Guidelines – All employees should participate in training in the correct way to perform their jobs. Any questions or suggestions about better or safer methods of performing tasks should be discussed with the supervisor. Employees should always be conscious of the safety of others, as well as themselves. Employees should always adhere to the following guidelines:

1. Observe all safety rules, practices, and procedures.
2. Promptly report any unsafe condition, accident, damaged or malfunctioning vehicle or equipment, any employee who is performing his or her job in an unsafe manner, and any other type of hazardous situation.
3. Operate only equipment assigned to the employee and for which the employee has received full training.
4. Use proper safety clothing, equipment, and personal protective equipment wherever provided, assigned, or required, as designated for the work performed.
5. Wear a seat belt when in a Library vehicle, when driving on Library business, or when operating any vehicle on Library premises.
6. Use appropriate, safe methods to lift heavy objects, and use back braces, handcarts, or other devices to assist with lifting or moving activities.



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7. Never endanger oneself or other individuals through inappropriate actions, horseplay, practical jokes, or by taking unnecessary chances.

8. Be prepared for fire or other emergency situations – know what to do, what actions to take, where to go, and the location of exits, firefighting equipment, and alarm pulls within the work environment.

9. Observe proper maintenance practices to keep work area, vehicles, tools, and other equipment in clean, safe, and operable condition.

Reporting Safety Hazards or Deficiencies – Any employee who believes that a safety or health risk exists must report the matter to his or her supervisor so that the Library may take appropriate action. The employee should make this report immediately upon detection of the safety or health risk. A safety or health risk may consist of, among other things, a condition in the workplace or the work methods of other employees.

Reporting Employee Injuries or Accidents – All workplace injuries and accidents must be reported immediately to the supervisor. This ensures prompt and appropriate medical treatment, allows for timely completion of reports as required by law, and enables eligible employees to qualify for coverage as quickly as possible. Except for emergencies (in which case the employee should seek immediate emergency treatment), if medical attention by a physician is needed, the employee must use one of the physicians specifically listed on the Workers' Compensation Notice posted by the Library on the staff bulletin board. Failure to report an injury or to receive medical treatment from a physician on the posted panel may jeopardize payment of medical bills or other benefits under workers' compensation insurance.

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### Emergency Preparedness

Emergency preparedness is an element of employee safety. Developing a written policy containing guidelines for responding and coping with an emergency will benefit employees and ultimately the library. There are many resources available to help create an emergency plan, including OSHA Publication 3088 (2001) “How to Plan for Workplace Emergencies and Evacuations,” and the Federal Emergency Management Agency’s website on preparedness for businesses, <http://www.ready.gov/business> (accessed on April 9, 2018). There are even resources specifically for libraries, which include *Emergency Preparedness for Libraries* by J.B. Todaro (2009), and *Disaster Response and Planning for Libraries*, Third Edition by Miriam Kahn (2012). Additionally, ALA has collected a vast array of resources for libraries in creating an emergency response plan, <http://www.ala.org/advocacy/govinfo/disasterpreparedness> (accessed on April 9, 2018).

#### Model Policy 205: Emergencies and Disasters

The Library Director (or designee) may close the Library when, in his or her best judgment, conditions are such that they pose a safety risk or danger to staff and patrons. Department managers will alert the Library Director (or designee) when conditions warrant closure. Conditions that warrant closure of the Library include those that endanger the health or safety of the staff or public. Staff members who are sent home will be paid for the remainder of their normal work shift.

If the building must be evacuated, the staff member in charge must ensure that all members of the public and staff have left the building. The building will then be secured to the extent possible (doors locked, security system armed, etc.) based on the current

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situation. The Library Director and the police department are to be informed of the evacuation and closure as quickly as it is safe to do so.

Emergency kits, including basic first aid supplies, a flashlight and batteries, biological hazard gloves and masks, and a battery-operated radio, will be maintained at the circulation desk and in the director's office. The kits will be checked monthly to ensure that all items are available and supplies are replenished as needed. In case of a disaster requiring shelter, e.g., tornado or flood, the staff member in charge should direct other staff and patrons to a designated area where basic survival supplies are maintained.

In the event that inclement weather or other conditions make it unsafe to open the Library, the Director will notify staff members that they should not report to work or that the Library will open on a delayed schedule. Staff members who are notified that they should not report to work will receive their regular pay. Staff on sick or vacation leave during an emergency closure will have their time charged to those pay accounts. Depending on the exact nature of the emergency closure, key staff may be required to report to work. Failure to report to work when directed may result in disciplinary action. The Director may also assign staff to work at different locations or for other county departments during times when the Library is closed.

Following any emergency, department managers must assess any damage to their areas of operation and submit a report to the Director. The Director will provide a report on the emergency and its handling to the board of trustees at its next meeting.

### **Violence**

Preventing violence in the workplace and protecting employees from violent acts related to their jobs are other specific elements of safety. A written policy on this issue should define prohibited behavior, explain the consequences of such

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behavior, and provide employees with a process for getting help if victimized by violence.

### Model Policy 206: Workplace Violence

The Library is concerned about the well-being and personal safety of its employees and anyone doing business with the Library and, consequently, strictly prohibits workplace violence. Acts of violence or threats of violence, whether expressed or implied toward individuals in the Library, will not be tolerated. All reports of incidents or perceived incidents of workplace violence or threats of workplace violence will be taken seriously and addressed appropriately. This policy concerns prohibited conduct, as well as general procedures and potential responsive steps in the event that workplace violence occurs despite preventive measures.

Workplace violence is any conduct that is severe, offensive, or intimidating enough to make an individual reasonably fear for his or her personal safety or the safety of family, friends, or property. Examples of conduct that may be considered threats or acts of violence under this policy include, but are not limited to, the following:

1. Threats of any kind (veiled or direct, verbal or non-verbal), intimidation, and attempts to instill fear in others.
2. Physically aggressive or hostile behavior.
3. Behavior that suggests a propensity for violence, such as belligerent speech, excessive arguing or swearing, or sabotage or threats of sabotage of Library property.
4. Intentional damage or destruction of Library property or of another's property.
5. Harassing or threatening physical, verbal, written, or electronic communications, including comments, phone calls, emails, letters, faxes, website materials, diagrams or drawings, gestures, or any other form of communication that causes a reasonable fear or intimidation response in others.

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6. Stalking (defined as following, placing under surveillance, or contacting another person without the consent of the other person for the purpose of harassing and intimidating the other person (O.C.G.A. § 16-5-90)).
7. Unauthorized or illegal possession of firearms, ammunition, explosives, knives, or weaponry of any type on library property is strictly prohibited. A lawfully possessed firearm may be stored within a personal vehicle that is locked out of sight within the trunk, glove box, or other enclosed compartment or area within such vehicle.

### Reporting Incidents

Any employee who is subjected to, observes, hears of, or becomes aware of any of the above actions or behavior by an individual in the Library must immediately report such incident to a supervisor.

Decisions may need to be made quickly to prevent a threat from being carried out, a violent act from occurring, or a life-threatening situation from developing. Nothing in this policy is intended to prevent quick action to stop or reduce the risk of harm to anyone, including requesting immediate assistance from law enforcement or emergency response resources.

All acts of violence or threats thereof, should be reported no matter how minor or insignificant they may appear. Failure to report any threats or acts of violence in violation of this policy is, in itself, a violation of this policy and may subject any employee involved to disciplinary action, up to and including termination.

### Investigations

All reports of acts or threats of violence will be promptly investigated. The Library may consult with law enforcement authorities or other resources as it deems appropriate. To the extent possible, identities of the reporting employee, any witnesses, and any individuals alleged to be involved in actual or threatened violence will

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be protected against unnecessary disclosure. All persons involved in the investigation are expected to refrain from discussing the matter with any person outside the investigation process. All employees – whether complainant, witness, or accused – are required to be truthful, accurate, and cooperative during a Library investigation. The Library will decide whether the workplace violence policy has been violated and, based upon its findings, will take appropriate preventive, corrective, or disciplinary action, up to and including termination.

### Consequences

Any employee found by the Library to have engaged in violence or threats of violence will be subject to immediate and appropriate disciplinary action, ranging from a written reprimand up to and including termination.

### Non-Retaliation Policy

Retaliation will not be tolerated against an employee for reporting in good faith a suspected act or threat of violence, or for providing information in good faith regarding a report made by another employee. Any complaints about retaliation should be reported in the same manner as violations of this policy are to be reported. Any employee found by the Library to have retaliated against another employee for these reasons will be subject to appropriate disciplinary action, ranging from a written reprimand up to and including termination. Conversely, an intentional or malicious false accusation could have a serious effect on an individual who has been falsely accused, and any individual found to have knowingly made false complaints will be disciplined based on the extent of the false accusation, up to and including termination.

### Orders of Protection

The Library may seek orders of protection (or restraining orders) against any person who violates the workplace violence policy.

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Employees who either obtain or are subject to an order of protection have additional responsibilities to report their situation to their immediate supervisor.

### Searches and Inspection

All Library equipment, property, and facilities (including, but not limited to, desks, workstations, file cabinets, lockers, computers and computer-stored information, email, voicemail, business records, vehicles, and any other property or equipment owned, leased, or provided by the Library) are subject to inspection at any time and for any reason. No employee shall have any privacy interest or reasonable expectation of privacy whatsoever in any Library equipment, property, or facility. If a search uncovers evidence of employee wrongdoing, illegal activity, or employee violations of Library rules or policies, such evidence may be used to support disciplinary action including termination. In cases involving suspected illegal activity, the evidence may be provided to the proper law enforcement authorities. Further, if the Library reasonably suspects that an employee has violated a policy that directly affects the safety or security of its employees, patrons, or facilities, the Library will take appropriate actions (such as contacting law enforcement officials, placing the employee on administrative leave while an investigation is conducted, or other actions as deemed appropriate).

### Drug-Free Workplace

Maintaining the library as a drug-free workplace is integral in achieving the library's mission. The use and possession of illegal substances in the library jeopardizes safety of both employees and patrons. Therefore, a clear policy on the library's refusal to tolerate drugs in the library is both a statement of what employees can expect—a drug-free workplace—and what is expected of them—the absence of illegal substances in the library.

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Note that in 2017, Georgia's General Assembly expanded the state's medical marijuana law, which legalizes possession of small amounts of cannabis oil by individuals suffering from certain medical conditions. O.C.G.A. § 16-12-191. The changing landscape in the area of legal marijuana raises questions about what an employer can prohibit with respect to substance possession. Although there is no case law to date in Georgia, other states have begun to provide guidance. For example, the Colorado Supreme Court held in 2015 that an employer's zero-tolerance drug policies superseded medical and recreational marijuana laws and that employers may terminate employees for using medical marijuana, even if the drug was used on the employee's own time and approved by a doctor. Despite the growing number of states with some form of marijuana legislation, marijuana remains a Schedule I substance under the Controlled Substance Act of 1970, making use and distribution of marijuana a federal crime. Under the Obama Administration, the Department of Justice turned a blind eye to marijuana possession and use that was in compliance with state laws. It is unclear, however, if Attorney General Jeff Sessions will take a stronger approach to enforcement of federal laws regarding marijuana possession. This is an area of developing law of which employers must remain cognizant in crafting policies regarding a drug-free workplace.

As public sector employers in Georgia, public libraries must also keep in mind Georgia's Drug-Free Public Work Force Act of 1990, which provides a comprehensive set of rules restricting public employers from employing, or continuing to employ, any individual who has been convicted of any criminal offense

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involving the manufacture, distribution, sale, or possession of illegal drugs.

O.C.G.A. § 45-23-4. Importantly, for this law to apply, the employee must have been convicted of a drug crime, not just arrested or accused in relation to a drug crime.

### Model Policy 207: Drug-Free Workplace

Employees of the Library may not engage in the manufacture, distribution, possession, or use of illegal drugs and controlled substances in the workplace. Employees who violate the terms of this policy statement will be subject to immediate termination.

The Library and its governing body recognize that the use of illegal drugs, or the abuse of legal substances such as prescription drugs or alcohol, may be a symptom of chemical dependency or mental health issues. Employees who pursue treatment under the Library's health care program may be granted sick leave, vacation leave, or emergency leave at the discretion of the Library Director.

As a method of promoting the drug-free workplace discussed above, some public libraries have instituted drug and alcohol testing. Note, however the American Library Association (ALA) is opposed to mandatory drug or alcohol testing. Instead, ALA advocates employee assistance programs as the best way for library employers to respond to performance deficiencies due to drug and alcohol use. Also, employers may test employees for alcohol only if they have a reasonable suspicion that an employee is under the influence of alcohol while at work. Importantly, a test for alcohol is considered a medical examination under the Americans with Disabilities Act (ADA). Therefore, employers may require employees to submit only to a test that is job-related and consistent with business necessity. As with alcohol, legal drug use, such as taking prescription drugs is protected under the ADA. Accordingly, an employer who is notified that an

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employee's medication may impair the ability to perform the assigned job must engage in the interactive process and, if possible, provide a reasonable accommodation that may include modifying job responsibilities. Keep in mind, however, over-the-counter and prescription drug abuse is considered illegal drug use, and employers may test employees for such abuse based on a reasonable suspicion.

### Model Policy 208: Drug Testing: Pre-Employment

The Library recognizes that the use or abuse of illegal drugs can have a significant impact in the workplace in terms of safety, workers' compensation claims, sick pay benefits, absenteeism, and productivity. The Library also recognizes the legal duty to protect its employees from drug-using employees. Therefore, the Library requires all employees to pass a pre-employment illegal drug screening test. The Library will pay all cost incurred for the testing procedures.

### Model Policy 209: Drug/Alcohol Testing: Reasonable Suspicion

Alcohol and/or drug testing may be required when there is reason to believe that an employee is not free of alcohol and/or illegal drugs while in the workplace or performing assigned duties.

Reasonable suspicion may occur due to an employee's appearance, behavior, speech, odors, or other evidence found or reported. When it is determined that an employee will be tested due to reasonable suspicion, he or she will be accompanied and transported to the testing site by a supervisor, and all costs incurred for testing will be paid by the Library.

Since alcohol metabolizes rapidly, Reasonable Suspicion alcohol testing will be completed at the closest testing site as soon as possible.

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An employee found to be under the influence of alcohol or illegal drugs while at work will receive discipline, up to and including termination.

### **Smoke-free Workplace**

Pursuant to the Georgia Smokefree Air Act of 2005, smoking is prohibited in enclosed public spaces. O.C.G.A. § 31-12A-4. Additionally, smoking is prohibited in any enclosed area within places of employment. O.C.G.A. § 31-12A-5. All employees and prospective employees must be notified of the prohibition. Employers may create a designated smoking area that complies with O.C.G.A. § 31-12A-6(a)(11), but there is no legal requirement to do so. Local ordinances may also come into play in determining where smoking may occur. The library's policy should inform employees as precisely as possible where smoking is prohibited and where, if anywhere, it will be allowed.

#### Model Policy 210: Smoke-free Workplace

The Library complies with the Georgia Smokefree Air Act of 2005 [and local ordinance or policy]. All Library buildings and Library vehicles are designated as smoke-free and tobacco-free areas. In addition, neither smoking nor tobacco use is permitted within 50 feet of any Library entrance or exit, or anywhere on Library grounds. This policy applies to the use of any tobacco product, including smokeless tobacco, and applies to both employees and visitors of the Library.

Further, smoking (which means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance) is strictly prohibited in all privately owned vehicles while used in the course of Library work whenever other Library employees or persons are present in the vehicle, regardless of whether the vehicle's windows are open. Smoking and tobacco use in privately owned vehicles are otherwise

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permissible, provided that it is done within the vehicle and is not within 50 feet of any library entrance or exit.

The Library understands that tobacco is a legal product and further recognizes that, as an employer, the Library may not require that employees or prospective employees refrain from tobacco use when not at work, and the Library will not discriminate against employees who use tobacco outside of employment. The success of this policy will depend on the courtesy and cooperation of both tobacco users and nonusers. All Library employees are responsible for following and helping to enforce this policy and should report any problems or violations to a supervisor. Violations of this policy will subject an employee to disciplinary action, ranging from a written reprimand up to and including termination.

As described above, the Georgia Smoke Free Air Act of 2005 applies to public libraries. In recent years a new product has emerged, the electronic cigarette (e-cigarette). An e-cigarette is any electronic Nicotine Delivery Product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine.

For a more in-depth discussion on e-cigarettes, *see* Chapter 2, Patrons: Smoking at § 2.12 [b].

There is nothing preventing a public library in Georgia from banning e-cigarettes; this is particularly true with regard to its employees. Under a broad interpretation of the Smokefree Air Act of 2005, e-cigarettes are already banned in public libraries. However, that statute does not explicitly apply to e-cigarettes; therefore, a library board that wishes to prohibit the use of the devices by employees or patrons should promulgate its own policy.

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### Model Policy 211: Electronic Cigarettes; Vaping

All library buildings and library vehicles are designated as smoke-free and tobacco-free areas. In addition, the use or inhalation of e-cigarettes or electronic cigarettes (vaping) is prohibited in library buildings and library vehicles. Smoking, tobacco use, and vaping are prohibited within 50 feet of any library entrance or exit, on loading docks, in courtyards, and on library grounds. This policy applies to the use of any tobacco or vaping product, including smokeless tobacco. It applies to both employees of and visitors to the library.

## Part 3: Code of Conduct

### Employee Conduct

Personnel policies explain what conduct is acceptable and what is not. A sound policy will list specific behavior that is prohibited, but it will also contain a disclaimer that not every instance of inappropriate behavior is referenced.

### Model Policy 301: Employee Conduct

To ensure orderly operations and provide the best possible work environment, the Library expects employees to follow rules of conduct that will protect the interests and safety of all employees and the organization.

It is not possible to list all the forms of behavior that are considered unacceptable in the workplace. The following is an illustrative list of examples of unacceptable conduct that may result in disciplinary action, up to and including termination.

1. Theft or inappropriate removal of possessions of the Library or employee property.
2. Committing or attempting to commit deliberate damage to Library property, facilities, tools, or equipment.
3. Working under the influence of alcohol or illegal drugs.
4. Possession, distribution, sale, transfer, or use of alcohol or illegal drugs on the premises.

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5. Fighting or threatening violence on the premises.
6. Removing, sending, or furnishing Library records or information to unauthorized persons.
7. Violating the library's anti-discrimination or anti-harassment policies.
8. Retaliating against any person who reports discrimination or harassment.
9. Sleeping or dozing on the job.
10. Insubordination or other disrespectful conduct.
11. Violations of safety or health procedures.
12. Possession of dangerous or unauthorized materials, such as explosives or firearms, on the premises.
13. Falsification of patron records or Library reports or documents.

### **Dress and Appearance Code**

Guidelines establishing the types of attire and acceptable grooming practices that are appropriate for the workplace will be helpful to employees. Moreover, a written policy on personal appearance that is communicated to employees and enforced in a consistent manner may prevent uncomfortable confrontations between management and employees. A modern issue with respect to dress codes is body art. Tattoos are becoming more common. The library is free to adopt a dress code that requires tattoos to be covered while in the workplace. *Roberts v. Ward*, 468 F.3d 963, 969 (6th Cir. 2006). Additionally, questions about the applicability of appearance requirements to transgender employees have caused uncomfortable situations in the some workplaces. Because gender identity has been recognized as a protected characteristic under Title VII, employers must strive to make dress and appearance codes gender neutral.

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### Model Policy 302: Dress/Appearance Code; Grooming

Public image plays an important role in developing and maintaining support for the Library. In order to maintain a public image consistent with a professional organization, each staff member's dress and grooming should be appropriate for a business environment and in keeping with his or her work assignment. Health and safety standards must also be considered in dressing for work.

Clothing and accessories must be neat and clean and should not draw inappropriate or disruptive attention to the individual. Staff members working with the public must dress appropriately for a casual business environment, defined as professional attire that is neat and tailored. Staff who primarily shelve materials, work outdoors, or whose work is confined to the back office areas may dress more casually, but shorts, halter tops, and bare feet are never permitted. T-shirts or other attire that promote political causes, campaigns, or issues may not be worn. Obscenities, euphemisms or slang words for foul language, and foreign phrases that could be interpreted inappropriately are also not permitted. Body art must be covered by clothing while the employee is in the workplace.

### Confidentiality of Patron Records

Under Georgia law, circulation records and similar records of a library that identify the user of library materials are not public records. O.C.G.A. § 24-12-30. These records are confidential and may not be disclosed except to members of the library staff in the ordinary course of business, upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward, or pursuant to an appropriate court order or subpoena.

### Model Policy 303: Employee Duty to Maintain Confidentiality

Library patron records that contain the identity of library users are confidential under the law. Employees have a duty to ensure that

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this information is not disclosed to non-library personnel. In the event an employee is presented with a court order or subpoena for patron records, the Library Director should be notified, and the determination of the propriety of the disclosure will be made by the Director.

### **Staff Use of Library Materials & Equipment**

Library management and the board must consider guidelines for use of materials and equipment by staff. Examples of issues that may arise include: (1) whether staff members be charged for personal copies, (2) whether staff members are required to check out library materials and be subject to overdue fines, and (3) whether staff members are allowed to checkout new materials before patrons. Answering questions of this nature in a clearly drafted policy statement will put employees on notice of what is appropriate conduct and prevent abuse of library privileges by “insiders.”

#### **Model Policy 304: Staff Use of Library Materials**

Library employees must exercise extreme caution in the access and use of materials placed in their trust. Staff members are prohibited from using Library facilities, equipment, supplies, and other resources for personal use, except to the extent that those resources are available to the public. Library materials and equipment taken for personal use must be checked out if they are to be removed from the library or if the item(s) will be kept away from the normal location for more than four hours. Large quantities of material should not be held out of the collection for extended periods for staff use.

Staff will not be charged for overdue fines or reserves but will be subject to disciplinary action if materials are not returned and discharged before the system generates a second overdue notice. Staff may not make personal copies on the photocopier using the bypass key. Violation of any part of this policy may be considered theft

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of property or services and subject employees to disciplinary or legal actions.

In today's digital age, virtually every office or clerical employee is assigned a computer at his or her workstation. And more and more often, these computers have unfettered access to the Internet. Therefore, in addition to having the ability to access work-related information and complete assigned tasks in ways far beyond the imaginations of office workers fifty years ago, employees have, literally at their fingertips, an endless supply of entertainment, shopping, and communication options wholly unrelated to work. In order to ensure that employee attention remains focused on work-related endeavors and to prevent use of employer equipment for improper purposes, employers have found the need to develop policies to address when, how much, and in what way employees may use their work computer for personal pursuits. Given that public library equipment is paid for by taxpayer funds, the need for limitations and guidelines aimed at channeling the primary usage of such equipment to work functions is paramount. Absolute prohibition on personal use of library equipment, particularly desktop computers, is not a realistic goal. On the other hand, unregulated personal use of library equipment during working hours would likely decrease efficiency and, in turn, undercut the service functions a public library provides to the community. The key to creating an enforceable policy with a goal of maintaining efficient work flow is to strike a balance that suits the work environment it targets. The model policies below are not one size fits all. Rather, each library system must evaluate its

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workplace circumstances and develop rules regarding personal use of equipment that best serve its working environments.

### Model Policy 305: Computer, Email, and Internet

This policy governs employee use of the Library's electronic communication systems, which include email, computers (including Internet access), voicemail, fax machines, telephones, and any other device used for communication (collectively referred to as "Communication Systems"). However, it does not pertain to an employee's use of any Communication Systems available to the public used by an employee during non-working hours.

Use of the Communication Systems constitutes a commitment by the Library's employees to observe and be bound by the provisions of this policy. The purpose of this policy is to ensure that the Library's Communication Systems are protected, properly managed, used for appropriate and acceptable purposes, and utilized in cost effective ways.

### Equipment and Resources

Communication Systems are made available for staff to conduct library-related business. Except for emergencies, use of the Library's equipment for personal reasons is limited to breaks and other times that fall outside of work schedules. Conducting personal or other non-work related business when at a public service desk at a time when the Library is open to the public, whether such action involves the use of the Library's equipment and resources or not, is strictly prohibited. Doing so may subject an employee to disciplinary action, up to and including termination. When on breaks, personal use is permitted so long as it does not interfere with the performance of an employee's job or the transaction of library business, consume significant resources, give rise to more than nominal additional costs or interfere with the activities of other employees.

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All equipment, including individual computers, tablets, and laptops, as well as all data entered into the computer network or any component thereof (such as individual computers, tablets, and laptops), is the property of the Library. Staff may not store personal or other non-work related information and or documents on the Library's equipment. The hardware, software, and accounts are given to employees to assist them in performance of their jobs. Employees should have no expectation of privacy in anything they create, store, send, or receive on the Library's equipment, network, or software. At the discretion of the Library Director or the Library Board, any and all data stored on the Library's equipment, network, or software may be accessed and reviewed. This may happen at any time and without notice to those who use or have used the equipment. Such data is subject to applicable Open Records requests submitted by the general public.

Equipment and software is installed and maintained by the Library's Information Technology (IT) department. Use of other software or equipment without prior approval by the IT department is strictly prohibited. Staff may not download and install programs on the Library's equipment without authorization from the IT department. Accounts and passwords are set up and issued by the IT department. Accounts and passwords may not, under any circumstances, be shared with, or used by, persons other than those to whom they have been assigned or by the IT department for the purpose of computer network maintenance.

### File Sharing

Staff must exercise caution when downloading or forwarding/sharing files. If such files are copyrighted, downloading or sharing them without licensing permissions is illegal and may subject the Library and the individual employee to legal sanctions. Willful file sharing of any copyrighted material is prohibited.

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### Software License Abuse

The Library requires strict adherence to software vendors' license agreements. Using library equipment and/or resources to copy licensed software contrary to vendor agreements or installing unlicensed and/or pirated software is strictly prohibited. Questions regarding software licenses should be referred to the IT department.

### Unacceptable Practices

The following list provides examples of unacceptable practices for which employees will be held accountable. This list is not exhaustive and should not be interpreted as such.

- Excessive use of the Library's equipment and/or resources to conduct non-library-related business. This includes phone calls and saving non-business related documents to the Library's network.
- Sending/forwarding chain letters or participating in the creation or transmission of unsolicited commercial e-mail (spam).
- Accessing unauthorized networks, servers, drives, folders, files, or information.
- Making unauthorized copies of the Library's files or documents.
- Destroying, deleting, erasing, altering, or otherwise tampering with the Library's files or other data needed by or potentially useful to other staff members and/or the Library in general.
- Disabling, defeating, or circumventing any security mechanisms such as Windows policies, Internet screening programs, security programs, or firewalls. Any employee who does so shall be subject to disciplinary action, up to and including termination.
- Deliberately or habitually propagating any virus or other code or file designed to disrupt, disable, impair, or otherwise harm either the Library's networks or systems or those of any other individual or entity.
- Willfully creating congestion, disruption, disablement, alteration, or impairment of the Library's networks or systems (e.g., adversely affecting Internet speed by streaming videos or unplugging computer equipment.)

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- Using abusive, profane, threatening, racist, sexist, or otherwise objectionable language in either public or private messages when using the Library's resources.
- Infringing, attempting to infringe, or aiding in any way in the infringement or attempted infringement on another person's or entity's intellectual property rights or copyrights.
- Browsing, retrieving, displaying, or disseminating any offensive, inflammatory, pornographic or inappropriate communications, including sexually and racially explicit or negative material.
- Composing, sending or forwarding communications which reasonably could cause another employee to feel offended, embarrassed, or harassed including any material relating to race, color, sex, pregnancy, religion, national origin, disability, age, marital status, sexual orientation, gender identity, military status, order of protection status, or any other characteristic protected by law.
- Sending or forwarding any communications which mask or misrepresent the identity of the sender, or which are encrypted.
- Engaging in activities for personal financial gain or for commercial use or profit.
- Using the Library's equipment or other resources to promote or oppose a political issue or candidate or a religious belief.
- Failing to properly log off or lock any secure, controlled-access computer or other form of electronic data system.
- Posting passwords on or near a computer, especially in a public area.
- Sharing or distributing passwords to unauthorized persons.
- Willful or recurring use of the Library's equipment and resources for purposes, or in ways, that are inconsistent with the policies, guidelines, or best practices will subject an employee to disciplinary action, up to and including termination.

### Personal Cell Phone Usage & Texting

With the advance of new technology comes the need for new policies. Twenty years ago, a library had no need to develop policies and guidelines for employee use

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of personal mobile devices. However, it is estimated that approximately ninety-five per cent of American adults now own a cell phone, and the share of Americans that own Smartphones has more than doubled in six years (in 2017 seventy-seven per cent, up from thirty-five per cent in 2011), according to the Pew Research Center's survey of Smartphone ownership. Given the portability of such devices, it is inevitable that employees will possess them at work, and the lure to use them is often too much for employees to resist. Many recent surveys have indicated that workplace productivity has dropped with the advent of Smartphones. Therefore, it is not uncommon for employers to impose limitations on when, where, and how often these devices can be used or viewed during the workday. Consider the model policies below: the first disallows personal cell phone usage completely during the workday; the second carves out only certain exceptions where personal cell phones cannot be used at work. There are a myriad of ways a policy on cell phone usage by library employees could be crafted. Library administrators should determine what regulations are right for the working environments at issue in their workplaces.

### Model Policy 306(a): Personal Cell Phone Usage (Strict)

Personal cell phones (including personal digital assistants, text messaging devices, and other similar wireless devices) must be turned off or put away during an employee's working time. Employees may make and receive calls and texts on personal cell phones during non-working time (i.e., the employee's scheduled break time/lunch time); however, these calls and texts must be received and placed away from working and patron areas. Employees may make and receive local personal calls on the library's telephone during working hours if an emergency arises.

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### Model Policy 306(b): Personal Cell Phone Usage (Lenient)

Employees may carry and use personal cell phones while at work. However, cell phones shall be turned off during meetings, conferences, and when employees are working in service locations such as the front desk or reference desk.

If employee use of a personal cell phone causes disruptions or loss in productivity, the employee may become subject to disciplinary action.

### Social Media

In conjunction with cell phone usage, library administrators face the question of what level of personal social media participation is appropriate for library employees during the workday and what limitations may be imposed regarding social media activities on personal time. Also, most public libraries maintain a social media presence. Employees utilizing social media on behalf of the library will need guidelines. While social media platforms enable users to share ideas and exchange information in a highly effective manner, an employer faces legal risks stemming from employee use of social media. Examples of such risks include unauthorized disclosure of confidential or proprietary information, embarrassment stemming from an employee's online words or actions, and claims for unlawful discrimination and harassment by other employees. To avoid, or at least lessen these risks, library administrators must address the issue through policy.

The following considerations are useful in developing a social media policy applicable to public library employees:

1. Define social media broadly. Given the rapid pace at which online communication platforms are being created and improved, a good social media policy

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should describe “social media” in terms broad enough so that the policy does not become outdated shortly after its distribution.

2. Reiterate that code of conduct policies apply to online actions. Remind employees that policies on equal employment opportunities, harassment, and confidentiality of patron records apply to employees’ social media activity. Also, detail the type of posts that the library considers improper (such as threatening or obscene posts).

3. Address work usage. Inform employees whether they are permitted to access social media at work and under what circumstances.

4. Distinguish the library from the employee. People often say or do things online that they would not in an offline setting. To reduce the risk that the library will be faulted for employees’ bad behavior online, advise employees that they may not claim that they speak on behalf of the library unless expressly authorized to do so (i.e., in managing the library’s social media presence).

5. Remember employees’ privacy rights. The social media guidelines that library managers establish for library workers must balance the legitimate interests the employer seeks to protect with employees’ privacy rights. Avoid attempts to gain unauthorized access to employees’ social media accounts and do not request employees’ social media passwords. Alert employees that they should have no expectation of privacy in publicly available social media postings. But discourage managers from “friending” subordinates on non-professional social media sites since that can be construed as the employer intruding on employee privacy.

6. Consider employees’ National Labor Relations Act (NLRA) Section 7 rights to organize, bargain collectively through chosen representatives, and engage in

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concerted activity for collective bargaining or other mutual aid of protection. Section 7 has been interpreted to endow employees with the right to photograph and make recordings in furtherance of their protected concerted activity, including the right to use personal devices to take such photographs and make such recordings at least on non-work time. The National Labor Review Board (NLRB) devotes considerable attention to the social media policies of employers to determine whether they impinge on employees' Section 7 rights. Therefore, in order to withstand NLRB scrutiny, a social media policy may not interfere with, among other things, employees' right to organize, express their personal opinions, or communicate on their own (or other employees') behalf about the terms and conditions of employment.

### Model Policy 307: Social Media

The Library recognizes that Internet-provided social media can be a highly effective tool for sharing ideas and exchanging information. However, the Library also seeks to ensure that social media usage serves the need to maintain the Library's integrity while minimizing actual or potential legal risks. The Library, therefore, establishes the following rules and guidelines for communicating employer information via social media. Violation of this policy may lead to disciplinary action, up to and including termination.

The Library defines "social media" broadly to include online platforms that facilitate activities such as professional or social networking, posting commentary or opinions, and sharing pictures, audio, video, or other content. "Social media" includes personal websites and all types of online communities (e.g., Facebook, LinkedIn, Yelp, YouTube, Twitter, Instagram, blogs, message boards, and chat rooms).

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Employee social media activity is covered by all of the Library's policies including, among others, the Equal Employment Opportunity, Anti-Discrimination and -Harassment, Confidentiality, and Internet policies.

Employees should not post content on social media that violates the Library's anti-discrimination and -harassment policies, or that is threatening or obscene.

Employees may use social media for non-business purposes while at work, but only if they are complying with all Library policies and the activity occurs during a break or meal period.

In personal social media usage, employees should not represent that the Library has given authorization to speak on its behalf or that the Library has approved the message, unless prior written authorization to do so is given from the Library Director. Without written authorization to speak on behalf of the Library, employees are encouraged to clearly state that views expressed belong to the poster alone and are not those of the Library or of any person or organization affiliated with the Library.

Employees may not illegally disparage the Library's services, its vendors, or its patrons. This means that employees may not intentionally make maliciously false statements that denigrate the Library's services, its vendors, or its patrons.

Employees should not record audio/video or take pictures of non-public areas of the Library's premises and display such content through social media without prior written approval from the Library Director. An exception to this rule would be to engage in activity protected by the National Labor Relations Act including, for example, taking pictures or making recordings of health, safety, and/or working condition concerns, or of strike, protest, or work-related issues, or other protected concerted activities.

Employees should not display or post video or other images of, or material about, other Library employees that are libelous, proprietary, harassing, bullying, discriminatory, retaliatory, or that can create a

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hostile work environment. Such conduct that would not be permissible in the workplace is not permissible between or among employees online, even if done during non-work hours and away from the workplace on personal devices or home computers.

Employees should not display or post video or other images of, or material about, the Library's patrons without prior written approval from the Library Director. Under no circumstances may a Library employee post Library patron records.

Managers/supervisors should not "friend" subordinate employees on non-professional social media sites.

Employees should expect that the Library will use software and search tools to monitor comments or discussions about it, its employees, its vendors, and its patrons that are posted publicly on the Internet, including social media.

The Library respects employees' rights to communicate concerning terms and conditions of employment. Nothing in this policy is intended to interfere with employee rights under federal and state laws, including the National Labor Relations Act.

### **Solicitation**

The workplace is often utilized as a place to solicit donations or purchases for fundraisers or for-profit ventures. While the sales of candy bars or cookies between coworkers is a simple, seemingly harmless exchange, real or perceived pressure to contribute to causes or purchase products could lead to problems between staff members. Furthermore, library staffers pestering patrons to buy products could discourage members of the public from visiting and using the library. A policy defining what conduct is acceptable in the arena of sales and solicitation is an important part of establishing workplace rules.

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### Model Policy 308: Selling and Soliciting in the Library

It is recognized that Library employees may engage in the sale of goods or services outside of their employment with the Library. However, it is never appropriate to solicit business from staff or patrons during Library work time. Soliciting business from patrons during off-work time while on Library property is not permitted; however, staff may offer a business card if one is requested. Information regarding personal business may be distributed to other employees by placing ads on the staff bulletin board, posting information in the staff lounge, and by leaving catalogs or brochures in the staff lounge. Oral and written invitations to product parties or distribution of information may not be made through interoffice mail. Display of items for sale is not permitted on Library property.

### Political Activities

Everyone has the right to hold opinions on political candidates and issues. However, expressing these opinions in the workplace should be avoided. Library employees represent the library, an entity of the state open to all members of the public. Neither patrons of the library nor other staff members should be subjected to lobbying efforts by an employee. Including proper cautions on this issue within the policies on staff conduct is advisable.

### Model Policy 309: Political Activity

Employees may engage in political activities on their own time. However, employees' rights to express their political opinions during work hours or as a representative of the Library are limited. Employees should refrain from wearing campaign or political buttons, distributing campaign or political literature except as permitted in the Library's policy on "Distribution of Free Materials," and expressing political opinions while on work time. T-shirts or other attire that promote a particular political issue, person, or cause are not

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appropriate. Bumper stickers may not be applied to Library property or Library vehicles unless specifically approved by the Library Director.

### **Staff Relations & Celebrations**

Personal relationships between coworkers arise as the result of the amount of time spent with each other—often more time than is spent at home with family.

Socializing and celebrating are ways that the workplace becomes a cohesive community. Caution should be exercised, however, to assure that employees are not coerced to participate in social activities. Moreover, social activities and celebrations must not become the central focus of employees to the dereliction of their library work. A policy offering guidelines to balance these competing interests will serve the library well.

#### **Model Policy 310: Socializing and Celebrations**

Good staff relations and the development of a cohesive work team benefit from some socializing. Therefore, the Library encourages a reasonable amount of socializing and staff celebration so long as these events do not interfere with the normal flow of work. Birthdays should be celebrated one time per month, with all birthdays for that month recognized at the same time. Staff parties to celebrate holidays will be scheduled at times with minimal effect on service, and all service desks must be covered during parties. Every staff member is welcome to attend any party held during work hours on Library property. Parties scheduled outside of work time and off Library property are considered personal parties, but, in the interest of good staff relations, party planners are encouraged to include all staff members in the festivities.

Gifts between individual staff members are not prohibited, but group gifts should be given equitably. Solicitation for contributions for group gift should be done anonymously by routing an envelope.

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Supervisors may not accept gifts except for token, inexpensive items such as coffee mugs, pens, and candy, from the people they directly supervise.

### **Non-Fraternization**

A non-fraternization policy oversees interpersonal conduct by employees and is created with good intent—to prevent employees from engaging in activities that could interfere with safety, employee morale, and employee productivity. In addition, these policies help to protect the employer from potential lawsuits arising from harassment claims. There are instances where employees have filed suit to challenge such policies on grounds of public policy, privacy, or freedom of association, but thus far anti-fraternization policies have been upheld by the courts.

#### Model Policy 311: Non-Fraternization

While the Library does not wish to interfere with the off-duty and personal conduct of its employees, certain types of off-duty conduct and relationships may interfere with the Library's legitimate business interests. To prevent unwarranted sexual harassment claims, confidentially lapses, uncomfortable working relationships, morale problems among other employees, and even the appearance of impropriety, managers and supervisors of the Library are strictly prohibited from engaging in consensual romantic or sexual relationships with any manager, supervisor, or other employee of the Library.

### **Visitors**

Because the library is a public place, family members or friends of employees are free to visit its facilities. A policy cautioning employees about becoming distracted by these visitors is prudent.

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### Model Policies 312: Visitors in the Workplace

The Library is unlike most workplaces in that Library facilities are open to the public. This can present a challenge when friends or relatives of employees come to the library. The following guidelines are designed to ensure that employees do not become distracted or neglect their duties when friends and family are visiting the Library.

#### Children or Other Family Members at Work

In order for the Library to maintain a professional and productive work environment, employees may not bring children to work during scheduled work times. An exception may be allowed in the case of an emergency (with supervisory approval). However, the Library workplace should not be used in lieu of childcare or adult daycare services. Parents should plan accordingly for the care of their children on days when children may be sick, on snow days, during school holidays, or other occasions. Standards for "child" or "children" also apply to any person who is in the care of the employee (e.g., disabled parent).

Employees are allowed to have children at the Library during their work hours only if:

- The child remains in the public areas of the library during open hours;
  - The child does not require the employee's care or attention during work hours;
  - The child does not distract the employee from his or her work;
  - The child does not distract other Library employees from their work;
- and
- The child's connection to the Library employee would not be apparent to patrons.

An example of an acceptable situation would be an employee bringing an older child to the Library and the child independently reading or

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completing homework in the public area while the employee is working.

Since the age at which a child can work independently without a caregiver's attention varies from child to child, a specific age requirement is not provided by this policy. Supervisors may disallow an employee from having a child at work if, in the judgment of the supervisor, the child is disruptive, distracting, or in need of care or attention.

In all cases, children are not allowed behind Public Services desks, and are not allowed to be unattended in staff areas.

### Visitors in the Workplace

Employees should limit their personal conversations with family members or acquaintances who visit the Library. Visits are permissible, but should be infrequent and brief in order to maintain a productive work environment.

### Restricted Access to Non-Public Areas of the Library

Access to non-public areas of the library is limited to current employees, volunteers, and scheduled maintenance or service workers. (For purposes of this section, non-public areas are those areas behind the public service desks, employee workrooms, employee offices, hallways, storage areas, computer equipment rooms, and break rooms.) Other persons with business-related reasons to be in these areas (such as vendors or consultants) must be accompanied by an employee at all times.

Any exceptions to this policy must be approved by the Library Director. (For example, an exception would be considered for "Take Your Child to Work Day.")



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### Part 4: Employment Practices

#### Recruitment & Hiring

The library staff is the backbone of the organization. Establishing hiring practices aimed at bringing the best and brightest to work in the library is crucial to its success. In many instances, a library job will attract a large number of applicants. A transparent procedure for filling positions that is consistently followed will allow the library to avoid accusations of favoritism or other inappropriate decision making in creating and maintaining its workforce.

##### Model Policy 401: Recruitment of Candidates for Positions

The Library is committed to developing a diverse workforce while also selecting the most qualified persons available for library positions. When hiring new staff or promoting current staff, the Library will systematically and aggressively make reasonable efforts to provide an equal opportunity for all employees and applicants. An applicant pool that is representative of the makeup of the community is desirable; however, no person under the age of eighteen will be considered for full-time regular positions. Positions will be advertised as widely as appropriate for the position, and, when possible, advertising will be targeted to reach qualified applicants from minority groups and persons with disabilities. Reasonable accommodation, in accordance with the Americans with Disabilities Act, will be provided to all applicants. Funds will be expended, subject to budgetary limitations, to pay travel costs for candidates selected for interviews for positions at the upper management level. Whenever possible, prescreening interviews will be conducted by telephone or video conferencing; however, when these methods are used, all candidates will be screened by the same prescreening method.

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Another consideration for administrators involved in the hiring process is stated time-frames or duration of employment. Courts could construe an offer of employment that contains a reference to the duration of the job to be an employment contract, which will supersede the at-will employment doctrine. This may be as simple as stating the job's salary as an annual amount. Any written offer should include notice to the offeree that the job is at will and does not have a specific duration. *See Model Policy 101: At-Will Employment.*

### **Employee Immigration Status**

In 2006, the State of Georgia enacted the Georgia Security and Immigration Compliance Act (GSICA), a comprehensive bill aimed at prohibiting public employers from hiring illegal immigrants. O.C.G.A. § 13-10-91. For purposes of GSICA, a “public employer” includes every department, agency, or instrumentality of the state or a political subdivision of the state. Pursuant to O.C.G.A. § 20-5-40, public library systems are local units of administration that have been created through participating agreements among city and county governments. Thus, the public libraries within the state of Georgia are “public employers” and are governed by GSICA, which requires them to verify employment eligibility of all newly hired employees through participation in a federal work authorization program.

#### Model Policy 402: Immigration Law Compliance

The Library is committed to full compliance with federal and state immigration laws and will hire only individuals with the legal right to work in the United States.

Pursuant to Section 2 of the Georgia Security and Immigration Compliance Act, all employees must complete Form I-9 and provide legal documentation of citizenship and/or work status as set forth on

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the form. Within three business days of hire, the Library will electronically verify the accuracy of the employee's Social Security number and other documentation through the United States Department of Homeland Security verification system. The employee will be immediately notified of a non-confirmation of his or her Social Security number and will be provided a referral letter. It is the employee's responsibility to resolve the discrepancy with the Social Security office within eight federal government working days. On the tenth federal government working day after the date of the referral letter, the Library will make a second inquiry to the Social Security Administration database for a final confirmation. A final non-confirmation will result in immediate termination. This policy and its procedures are intended to comply with the Georgia Security and Immigration Compliance Act. Should any portion of said Act be amended, modified, revised, or repealed, or if other or additional controlling federal or state immigration laws or regulations become adopted in the future, the processes and requirements set forth in such Act, laws, or regulations shall govern.

### **Nepotism**

Nepotism is the act of favoring relatives in making employment decisions. An example is hiring or promoting relatives solely because they are family members, with no consideration of the qualifications or merits of other job candidates or employees.

Anti-nepotism rules in public organizations have led to lawsuits based on anti-discrimination statutes and the United States Constitution. In these suits, plaintiffs claim they are entitled to work with their spouses if both are qualified employees. Employers, on the other hand, defend anti-nepotism rules as a business necessity, arguing that married coworkers are a potentially disruptive influence in

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the workplace. A review of federal and state court decisions suggests that married coworkers rarely prevail in such cases. In this area of civil and constitutional litigation, public employer liabilities appear to be limited to situations where restrictions are unreasonably broad.

For a more in-depth discussion, *see* Chapter 1: Employment, Nepotism at § 1.06.

### Model Policy 403: Nepotism

Dependents of the Director and Library Board of Trustee members are ineligible for employment with the Library. In addition, no immediate family member of a current staff member will be considered for a position wherein one member would have supervisory duties over the other. Each case of a second family member applying for a position that is not covered above will be judged individually.

Employing relatives in the same area of an organization may cause conflicts or problems with favoritism and employee morale. In addition to claims of partiality in treatment at work, personal conflicts from outside the work environment can be carried into working relationships.

If a relative relationship is established after employment, a supervisor will work with the individuals concerned to decide if there is a problem and who is to be transferred. If a voluntary solution cannot be reached within 30 calendar days, management will decide.

For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with an employee is similar to that of persons who are related by blood or marriage.

### Salary

Questions about compensation from employees are commonplace. Setting forth the policy of the library on how its employees are paid will provide useful information to the staff. Often library employees are paid within the framework of

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the governing authority's pay scale. Explaining the structure of job classifications and pay scales as well as making all related documents available to employees is the best way to keep workers in the know. Moreover, Georgia Public Library Service's (2015) standards recommend a written personnel classification plan with a starting salary for each position and written job descriptions listing the duties of each position.

Even in the best of economic times, libraries struggle for enough funding to maintain staff. In many cases, salary increases are simply not possible. A library's salary policy should be up front on this issue. Additionally, because public libraries in Georgia are funded, at least in part, using state funds, the Gratuities Clause of the Georgia Constitution prohibits the payment of bonuses. *See* Ga. Const. art. III, sec. VI, para. VI. This should be explained in the policy.

### Model Policy 404: Salary

Salary ranges are established for each position classification by the Library Board and are set forth in a written personnel classification plan (current version is attached to this handbook as an appendix). New employees are generally hired at the base level of the salary range. When approved by the Library Director, new hires may enter at a higher salary range based on exceptional experience, relevant education, or other appropriate factors.

### Pay Increases

Pay increases are not automatic and depend on a variety of factors. Any type of pay increase will be dependent on funding. Merit increases will be based on an employee's job performance. In order to qualify for a merit increase, employees must have all "satisfactory" or above ratings on their performance evaluations. Market adjustments (i.e., cost of living adjustments) are not based on performance but are

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applied “across the board” to all employees at the same time and will result in an updated pay scale. Promotion to a position in a higher pay grade will also result in a pay increase based on the pay scale for the new pay grade. Regardless of the reason for the pay increase, employees may receive pay increases only to the maximum amount for their pay grade.

### Pay Reductions

A pay reduction may occur in the event of a demotion. Pay reductions due to a demotion will correspond to the pay range of the assigned position, and no employee’s pay will be reduced to a point below the minimum of the pay range for that position. When an employee is demoted to a lower pay grade, the employee’s salary will typically decrease by the dollar difference between the minimum salary of the old pay grade and the minimum salary of the new pay grade. Staff-wide pay reductions may occur if the Library receives significant funding reductions. In this situation, employees already at the minimum of their pay grades may temporarily be paid below the minimum of the pay scales for their positions.

Employee bonus payments or monetary reward programs are prohibited by the Gratuities Clause of the Georgia Constitution.

### Frequency of Pay Periods

Georgia law requires that employers pay employees at least twice monthly. O.C.G.A. § 34-7-2(b). There are some limited exceptions; however, none are applicable to public libraries. While this statute is not new, many employers are unaware of it and are currently in violation. There is no penalty provision within the law; however, in the event that an employee who is being paid less frequently than two times per month makes a challenge to the employer’s practices, there is no

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legitimate defense for the employer. Accordingly, all employers should undertake efforts to become compliant with this statute as soon as practical for the organization.

### **Benefits**

An employee benefits package is an element of total compensation. Just as employees will be eager to know about salary, they will have questions about their benefits. Explaining benefits and eligibility within personnel policies will assist employees and management.

In many cases, the library's governing authority will dictate the benefits available to employees. The library's written policy on benefits may simply refer employees to underlying documents that contain detailed and comprehensive information about the employee benefits package. Or, the library may choose to include the details within its personnel policy manual that is provided to all staff members. If so, keeping this section of the manual updated is crucial.

#### Model Policy 405: Employee Benefits

Benefits such as health insurance, group insurance, vacation and sick leave, paid time off, employee retirement plans, child care or elder care supplements, carpool subsidies, and other miscellaneous benefits (travel expenses, tuition reimbursements, access to subsidized day care, etc.) are established and administered by [name of governing authority]. The Library may not alter these benefits without specific authorization from [governing authority].

### **Attendance and Leave**

For employees, the ability to take time off work when needed without losing pay is a critical element of job benefits. For the library, on the other hand, assuring

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that the organization is adequately staffed at all times is of utmost importance.

Attendance and leave policies seek to balance these interests.

### Model Policy 406: Attendance

Punctual and regular attendance is an essential function of each employee's job at the Library. Any tardiness or absence causes problems for fellow employees and management staff. When an employee is absent, his or her work usually must be performed by others. Employees are expected to report to work as scheduled, on time, and prepared to start work. Employees also are expected to remain at work for their entire work schedule, except for break periods or when required to leave on authorized Library business. Late arrival, early departure, or other absences from scheduled hours are disruptive and must be avoided. In all cases of absence or tardiness, employees must provide their supervisor with an honest reason or explanation. Documentation from medical representatives regarding the reason for the absence may be requested.

Employees also must inform their manager of the expected duration of any absence. Unless there are extenuating circumstances, an employee must call in within 30 minutes of his or her regular starting time on any day on which the employee is scheduled to work and will not report to work. Excessive absenteeism may be grounds for discipline, up to and including termination of employment. Generally, any unpaid absence not protected by law will be considered excessive. Each situation of excessive absenteeism or tardiness will be evaluated on a case-by-case basis. Any employee who fails to report to work without notification to his or her supervisor for a period of three days or more may be terminated unless this absence is protected by law.



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### Model Policy 407: Holiday Leave

#### Paid Holiday Leave

The Library shall celebrate the following holidays off with pay for regular full-time employees:

NEW YEAR'S DAY	January 1
MARTIN LUTHER KING DAY	3rd Monday of Jan.
PRESIDENTS DAY	3rd Monday of Feb.
MEMORIAL DAY	Last Monday of May
INDEPENDENCE DAY	July 4
LABOR DAY	1st Monday of Sept.
VETERANS DAY	November 11
THANKSGIVING DAY	4th Thursday of Nov.
CHRISTMAS DAY	December 25

The Library Director, upon approval by the Board of Trustees, may change holidays for employees.

In the event a holiday falls upon a Sunday, the following Monday shall be deemed to be the legal holiday. In the event the legal holiday falls on a Saturday, the preceding Friday shall be deemed to be the legal holiday. When a holiday falls within a period of paid leave, the holiday shall not be counted as a leave day in computing the amount of leave debited. An employee who is absent without leave on the day immediately preceding or following a holiday shall lose the holiday as well as pay for that day.

### Model Policy 408: Vacation Leave

Employees shall, after 90 days of continuous service from the last date of hire with the Library, accrue vacation leave on the following basis:

Regular Employees:

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All full-time and part-time permanent employees shall earn vacation leave on the basis of the following schedule:

One day for each month of service from the date of employment up to and including December 31 next following the date of employment.

Total vacation leave shall not exceed ten working days in the first year.

After completion of one year through completion of five years - ten days or two weeks of regular employment.

After completion of five years through completion of ten years - fifteen days or three weeks of regular employment.

After completion of ten years through completion of fifteen years - twenty days or four weeks of regular employment.

After fifteen years of service; the employee shall be entitled to twenty days per year plus one additional day per year for each year of service over fifteen years. Total vacation leave under this rule may not exceed twenty-five days or five weeks of regular employment per year.

Calculations of length of service are based on the anniversary date of the employee's hiring. Vacation leave may not be carried forward into the succeeding year; such time must be used in that year or forfeited.

An employee hired on or before the first pay period of any month shall accrue vacation leave from the first day of that pay period. An employee hired after the first pay period of any month shall accrue vacation leave from the first day of the next pay period.

Upon resignation or retirement from Library employment an employee shall be paid cash at the normal rate of pay for his or her unused vacation leave, provided regular status has been attained.

All vacation leave shall be taken at such time as shall be approved by the Library Director. Vacation leave shall be expended in increments of not less than one full work day. Vacation leave shall be scheduled at such times as the Library Director finds most suitable after considering the wishes of the employee and the requirements of the department. All requests to use vacation leave must be approved

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by the Library Director prior to the commencement of the requested time off.

Vacation leave advances are limited to the amount of available accrued vacation benefits. If the employee retired or resigned, such employee shall be entitled to a sum of money equal to his or her former regular compensation for any earned vacation leave which has not been used; provided, however, that in the event such employee fails to give the Library Director or Board of Trustees under whom he or she is employed at least two weeks' notice of such termination of employment or is discharged for cause, pay for vacation leave shall be forfeited.

### Vacation Leave for Regular Part-Time Employees:

Regular part-time employees who separate from the Library may receive compensation at their regular rate of pay for each hour of vacation leave earned. Regular part-time employees shall accrue vacation leave on a pro rata basis.

### Transfers:

If an employee transfers between another County department and the Library, the vacation leave credits shall also be transferred. The established period of determining vacation leave balance will be from the employee's date of hire.

Vacation leave earned by an employee cannot be transferred to another employee.

Temporary employees shall not earn vacation leave or be entitled to vacation leave upon separation.

Vacation leave will not accrue while an employee is on leave of absence without pay. Accrued and unused vacation leave may be used to supplement sick leave if the employee has exhausted sick leave accruals.

For full-time employees, paid holidays occurring during vacation are not charged to vacation leave.

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Earned vacation leave, sick leave, and personal leave accruals must be exhausted prior to taking an unpaid medical leave of absence.

### Model Policy 409: Sick Leave

Employees are entitled to six working days of sick leave per calendar year. Prior to the return to work, the Library may require an employee to be examined by a physician designated by the Library to verify fitness to return to normal duties. An employee may not be permitted to return to work until the verification is received.

All regular full-time employees and permanent part-time employees shall be entitled to sick leave as follows:

1. As used herein, sick leave means paid leave that may be granted to an employee who through sickness or injury becomes incapacitated to a degree that makes it impossible for the employee to perform the duties of the position or who is quarantined by the Board of Health because of exposure to a contagious disease or illness in the immediate family which requires the personal attendance of the employee to insure care for member of the immediate family. The term "immediate family" as referred to herein shall mean father, mother, spouse, child, foster child, brother, and sister. Sick leave to care for members of the immediate family will not be approved for extended periods of time.
2. Temporary or seasonal employees shall not be eligible for paid sick leave.
3. If an employee is unable to report for work due to illness, this fact shall be reported to the department no later than one-half hour after the start of the normal workday. The employee must speak directly to his or her supervisor or higher staff member within the Library's chain of command.
4. Thereafter, employees shall be entitled to sick leave with a doctor's note needed to return to work after two or more consecutive days of sick leave taken. A doctor's note will also be necessary after four singular sick leave days taken.

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5. Sick leave benefits shall apply to bona fide cases of sickness, accidents, doctor or dental appointments, maternity leave, and requests for the employee's presence by immediate family, doctor, or clergy due to family illness or emergency.

6. When an employee goes on sick leave, he or she must speak directly to his or her supervisor immediately. Notification should be within thirty minutes or as soon as possible given certain extenuating individual circumstances, after the beginning of the scheduled work day. Failure to do so may result in denial of such leave pay. The employee should also let the supervisor know when he or she expects to return to work.

7. Sick leave shall be rounded to the nearest half hour. When possible, sick leave should be taken in increments of no less than four hours.

8. No sick leave will be given to an employee in excess of the amount earned and available to the employee.

9. An employee may utilize vacation leave when sick leave has been exhausted.

10. All sick and vacation leave must be exhausted prior to taking an unpaid medical leave of absence. (See FAMILY AND MEDICAL LEAVE ACT POLICY.)

11. It is the responsibility of the Library Director to ensure the provisions of this policy are observed. Corrective action should be taken in instances of suspected abuses or misinterpretation of the utilization of sick leave.

12. The Library Director will ensure that any sick leave used will be reflected with the submission of time sheets.

13. It is the responsibility of the Library Director to ensure that proper accountability of sick leave is kept on all eligible employees.

### Model Policy 410: Bereavement Leave

A regular full-time or permanent part-time employee who has a member of his immediate family taken by death shall receive up to

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three work days off with pay as bereavement leave to arrange and attend funeral activities with approval of the employee's supervisor.

"Immediate family" shall be defined as spouse, mother, father, foster parents, mother-in-law, father-in-law, child, sister, brother, daughter-in-law, son-in-law, sister-in-law, brother-in-law, grandparent, and grandchild. All "immediate step family" relatives will also be included. The employee must notify his or her immediate supervisor upon making determination to take time off from work. The Library may request documentation of the necessity of bereavement leave.

If additional time is necessary, it shall be taken as vacation or unpaid leave, if vacation leave has been exhausted with advance authorization by the appropriate supervisor. Time for attendance at a funeral of others may be granted without pay. Employees who fail to return to work on the date specified to the immediate supervisor or Library Director without receiving an extension are subject to disciplinary action, up to and including termination.

### Model Policy 411: Jury Duty Leave

Any permanent full-time or part-time employee who is required to serve on a jury, or as a result of official Library duties is required to appear before a court, legislative committee, or quasi-judicial body as a witness in response to a subpoena or other directive, shall be allowed authorized leave with pay less any amount received for such service. An employee who receives notice of jury duty or witness service must notify his or her supervisor immediately in order that arrangements may be made to cover the position. The Library may request that an employee who is called for jury duty be excused if the absence would create a hardship on the operational effectiveness of the department to which he or she is assigned.

The employee's pay may be offset by the amount of jury or witness fees, excluding any mileage fees. Time away will not affect vacation, sick leave, or personal leave accruals.

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Employees who appear in court as the plaintiff or the defendant in any action not related to their official duties shall not be paid for time away from work unless that time is accrued vacation or personal leave. Court payments for travel expenses are to be retained by the employee.

The employee may keep any court payment for services performed on the days of his or her regularly scheduled weekend or performed while on vacation or personal leave.

Employees are to return to work after jury duty although no more than the regularly scheduled number of hours for both jury duty and work shall be required. If excused as a juror on any given day, the employee is expected to contact his or her supervisor and to report to work as instructed.

The Library may require employees to supply documentation, not only of a subpoena for jury duty, but also a slip from the jury manager verifying actual attendance at jury duty.

### **Family Medical and Leave Act of 1993**

The Family and Medical Leave Act (FMLA) provides an entitlement of up to twelve weeks of job-protected, unpaid leave during any twelve-month period to eligible, covered employees for the following reasons: (1) birth and care of the eligible employee's child, or placement for adoption or foster care of a child with the employee, (2) care of an immediate family member (spouse, child, parent) who has a serious health condition, and (3) care of the employee's own serious health condition. It also requires that the employee's group health benefits be maintained during the leave. 29 U.S.C. § 2601 *et seq.* The FMLA is administered by the Employment Standards Administration's Wage and Hour Division within the U.S. Department of Labor.

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Employers must post a general notice explaining the FMLA's provisions and providing information regarding procedures for filing a claim under the Act in a conspicuous place where it can be seen by employees and applicants. Under the regulations, this posted notice includes additional information regarding the definition of a serious health condition, the military family leave entitlements, and employer and employee responsibilities. **Employers must also include the information in this general notice in any employee handbook or other written policies or manuals describing employee benefits and leave provisions.** Additionally, under the regulations, an employer without a handbook or written guidance is required to provide this general notice to new employees upon hiring.

### Model Policy 412: Family and Medical Leave

The Library board has adopted this policy to implement the terms of the Family and Medical Leave Act of 1993 (FMLA). Eligible employees are entitled to family and medical leave on the terms and conditions stated in this policy, the regulations issued by the Department of Labor under the FMLA, and in the Library's other applicable leave policies.

#### A. Definitions:

For purposes of this policy, the following definitions apply:

1. "Eligible Employee" means an individual who has been employed by the Library for at least twelve months and has worked at least 1,250 hours during the twelve-month period immediately preceding the commencement of the requested leave.

2. "FMLA Leave" means leave that qualifies under the Family and Medical Leave Act of 1993, as amended by the National Defense Authorization Act of 2008, Pub. L. 110-181, and the Department of Labor's regulations and is designated by the Library as so qualifying.

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3. "Leave Year" means the twelve-month period measured backward from the date each employee's leave commenced.

4. "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider.

5. "Inpatient Care" means an overnight stay in a hospital, hospice, or residential medical care facility, including a period of incapacity or any subsequent treatment in connection with the inpatient care.

6. "Continuing Treatment" includes:

a. A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

i. Treatment by a health care provider two or more times within thirty days of the first day of incapacity; and

ii. Treatment by a health care provider on at least one occasion, which results in

a. a regimen of continuing treatment under the supervision of a health care provider;

b. A period of incapacity due to pregnancy or prenatal care;

c. A period of incapacity or treatment for such incapacity due to a chronic serious health condition;

d. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or

e. Any period of absence to receive multiple treatments by a health care provider.

7. "Covered Service member" means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

8. "Covered Military Member" means the employee's spouse, son, daughter, or parent on active duty or call to active duty status.

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9. "Active duty or call to active duty" means duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation as either a member of the reserve components or a retired member of the Armed Forces or Reserve.

10. "Serious Injury or Illness," in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

11. "Qualifying Exigency" means the following circumstances:

a. Short-notice deployment – to address any issues that may arise due to the fact that Covered Military Member received notice of the deployment seven or less calendar days prior to the date of deployment;

b. Military events and related activities – to attend any official ceremony, program, or event sponsored by the military that is related to the Covered Military Member's active duty, and to attend family support or assistance programs and informational briefings sponsored by the military;

c. Child care and school activities – to arrange for alternative childcare, to provide childcare on an urgent or immediate basis, to enroll or transfer a child to a new school, and to attend meetings with school staff that are made necessary by the Covered Military Member's active duty or call to active duty;

d. Financial and legal arrangements – to make or update financial or legal arrangements related to the Covered Military Member's absence while on active duty; and to act as the Covered Military Member's representative with regard to obtaining, arranging, or appealing military benefits;

e. Counseling – to attend counseling sessions related to the Covered Military Member's deployment or active duty status;

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f. Rest and recuperation – to spend up to five days with a Covered Military Member who is on short-term, temporary rest and recuperation leave;

g. Post-deployment activities – to attend ceremonies and reintegration briefings for a period of ninety days following the termination of the Covered Military Member's active duty status and to address issues arising from the death of a Covered Military Member; and

h. Other activities that the Library and employee agree qualify as an exigency.

### B. Reasons for FMLA Leave:

An Eligible Employee is entitled to a total of twelve weeks of unpaid leave during each Leave Year in the event of any of the following:

1. The birth, adoption, or placement for foster care of a son or daughter of the employee and to care for such child. (Leave must be taken during the twelve-month period following the birth or placement and must be taken in a single consecutive period and may not be taken intermittently or on a reduced schedule.)

2. A serious health condition of a qualifying family member, i.e., spouse, son, daughter, or parent of the employee, if the employee is needed to care for such family member.

3. A serious health condition of the employee that makes the employee unable to perform any of the essential functions of his or her job.

4. Any "qualifying exigency" arising out of the fact that an employee's spouse, parent, son, or daughter is on active duty or has been called to active duty in the Armed Forces in support of a contingency operation.

An Eligible Employee is entitled to a total of twenty-six weeks of unpaid leave during a single twelve-month period to care for a parent, son, daughter, spouse, or next of kin who is a Covered Service member, regardless of whether the employee has taken leave for

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another FMLA qualifying reason in the past twelve months. Any leave taken under any of these circumstances will be counted against the employee's total entitlement to FMLA leave for that Leave Year.

### C. Paid Leave Benefit Coordination with FMLA Leave:

FMLA leave under this policy is generally unpaid leave. If, however, the employee is eligible for any paid leave under any other benefit programs such as accrued vacation, unused sick, or personal days, the employee will be required to exhaust the paid leave upon the commencement of, and concurrently with, FMLA leave (unless the employee's own serious health condition has caused the leave and the employee is receiving workers' compensation benefits). Paid leave will run concurrently with and be counted toward the employee's total twelve-week or twenty-six-week period of FMLA leave. Employees on leave that qualifies both as workers' compensation and FMLA leave who are offered a light duty position will have the option of remaining on FMLA leave without pay (and foregoing the light duty position and additional workers' compensation benefits) or accepting the light duty position. If the employee accepts the light duty position, the employee's right to job restoration (as described below) runs through the end of the applicable Leave Year. If the employee accepts light duty, then he or she retains the right to be restored to the same position the employee held at the time his or her FMLA leave commenced or to an equivalent position.

### D. Intermittent or Reduced Scheduled Leave:

FMLA leave may be taken intermittently or on a reduced work schedule basis. If FMLA leave is taken intermittently or on a reduced schedule basis, the Library may require the employee to transfer temporarily to an available alternative position with an equivalent pay rate and benefits, including a part-time position, to better accommodate recurring periods of leave due to foreseeable medical treatment.

Every employee is obligated to make a reasonable effort to schedule medical treatment so as not to unduly interrupt Library

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operations. Any employee who needs an intermittent or reduced schedule leave shall submit an application for such leave on a form supplied by the Library at the time described above. The employee shall also, within the time limits set forth, furnish the Library with the proper medical certification on Form WH-380-E, which will be supplied by the Library, regarding the need for such intermittent or reduced schedule leave. As in the case for other FMLA leaves, the Library may require a second or third medical certification. Prior to the commencement of any intermittent or reduced schedule leave, the employee requesting intermittent or reduced schedule leave must advise the Library of the reasons why the intermittent/reduced schedule leave is necessary and of the schedule for treatment, if applicable. The employee and the Library shall attempt to work out a schedule for such leave that meets the employee's needs without disrupting Library operations.

### E. Employee Notice Requirement:

Employees are required to provide the Library with sufficient information to make it aware that the employee needs FMLA-qualifying leave and the anticipated timing and duration of the leave. Sufficient information may include the following: that the employee is unable to perform his or her job functions; that the employee's family member is unable to perform his or her daily activities; that the employee or his or her family member must be hospitalized or undergo continuing treatment; and the circumstances supporting the need for military family leave. When an employee seeks leave due to a FMLA-qualifying reason for which the Library has previously provided FMLA-protected leave, the employee must specifically reference the qualifying reason for the leave and the need for FMLA leave.

If the need for leave is foreseeable, the employee is required to provide such notice to the [DESIGNATED LEAVE ADMINISTRATOR] at least thirty days before the commencement of the leave, unless it is impracticable to do so under the circumstances, in which case notice must be given as soon as possible, generally the same or the next

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business day. The employee also must follow any Library policy requiring advance notice, reasons for leave and anticipated start, and duration of the leave. Failure to provide advance notice or follow the Library policy when the need for leave is foreseeable may result in delay or denial of FMLA leave. If the leave is not foreseeable, the employee must provide notice to the Library of need for leave as soon as practicable and must follow the Library's normal call-in procedures, as set forth in Section \_\_\_ of this Handbook. Failure to follow the Library's call-in procedures, absent unusual circumstances, will result in delay or denial of the leave. In case of planned medical treatment for a serious health condition, the employee is required to make a reasonable effort to schedule the treatment so as not to disrupt the operations of the Library. Employees are required to give additional notice as soon as practicable whenever there is a change in the dates of scheduled leave. The Library requires that the employee's health care provider complete a fitness-for-duty certification that specifically addresses whether the employee is able to perform the essential functions of his or her job before the employee can return to work. If the Library has a "reasonable safety concern," it may also require periodic fitness-for-duty certifications prior to the employee's return from intermittent FMLA leave, up to once every thirty days. A "reasonable safety concern" means a reasonable belief of significant risk of harm to the individual employee or others. Upon receiving sufficient notice of an employee's need for FMLA-qualifying leave, the Library will notify the employee of his or her eligibility to take FMLA leave within five business days of the request, absent extenuating circumstances. At this time, the Library will also provide the employee written notice of the employee's rights and obligations with respect to the leave (as well as providing copies of the required certification form).

### F. Application and Medical Certification:

A leave to care for the employee's own serious health condition, or the serious health condition of a covered family member, must be

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supported by a medical certification completed by the health care provider for the employee or the covered family member. A qualifying exigency leave or a leave to care for a Covered Service member with a serious injury or illness must also be supported by a certification.

The Library will provide the proper certification to the employee for his or her respective leave within five business days of the employee's request for leave. The employee must return a complete and sufficient copy of the appropriate certification to the Library within fifteen calendar days of receiving the certification, unless it is not practicable. If the employee returns an incomplete or insufficient certification, the Library shall advise the employee in writing what additional information is necessary to make the certification complete and sufficient. In order to cure the deficiency, the employee must then return a complete and sufficient certification to the Library within seven calendar days. If the employee fails to cure a deficiency in a certification, or fails to return a certification, within the prescribed time period, the Library may deny the taking of leave.

A Library representative (other than the employee's direct supervisor) may contact the employee's health care provider to clarify or authenticate the medical certification submitted for leave for the employee's own serious health condition or the serious health condition of a family member. If the Library has reason to doubt the validity of a medical certification, the employee will be required to obtain a second or third opinion at the Library's expense. Failure to comply with these certification requirements will result in the delay, denial, or termination of leave. An employee who will be on FMLA leave for more than one week is required to call [DESIGNATED LEAVE ADMINISTRATOR] weekly to report when and if the employee expects to return to work. The Library may request recertification at any time during the course of the leave for the employee's own serious health condition, if: (1) the employee requests an extension of leave, (2) the circumstances of the employee's condition as described in the previous certification have changed significantly, or (3) if the Library



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has reason to suspect that an employee on FMLA leave has fraudulently obtained the FMLA leave. If desired by the Library a second or third certification in the manner provided above may be required. If the employee's leave to care for his or her own serious health condition or that of a family member is expected to last more than thirty days, the Library will require a new certification from the employee's health care provider when leave is scheduled to expire, or every six months, whichever occurs earlier. When the Library learns of an FMLA reason for leave after a leave has commenced under another of the Library's policies, the Library will designate the leave as FMLA-qualifying from the commencement of the leave. Employees are required to cooperate in providing the Library with information needed to make this determination.

### G. Continuation of Group Health Benefits:

The Library will maintain the employee's coverage under a group health plan during the period of FMLA leave under the same terms and conditions as though the employee were actively working. During the leave, the employee will be required to continue to make all premium payments that he or she otherwise would have had to make if actively employed. Where feasible, the Library will advise the employee concerning the necessary arrangements for such payments prior to the commencement of the leave.

If the employee fails to return to work following the expiration of FMLA leave for a reason other than a serious health condition or circumstances beyond the employee's control, the Library will be entitled to the repayment by the employee of any premiums paid by the Library during the leave. Failure to make timely premium payments may result in the termination of coverage.

An employee on FMLA leave should deliver payment of the employee's portion of such premium to [DESIGNATED LEAVE ADMINISTRATOR] prior to the first work day of each month. Failure to make prompt payment of the employee's portion of such premium may result in the loss of medical insurance coverage for the duration of the



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FMLA leave, but upon the employee's return to work, the medical insurance will be restored as of the date that the employee returns. If the employee does not return from FMLA leave or returns to work, but does not remain an active employee for at least thirty days, the Library may seek to recover the amount paid for such insurance premiums from the employee. An employee on FMLA leave shall be responsible for the payment of the full premium for all other insurance, pensions, and other benefits. Failure of the employee to pay the entire premium for such items shall result in their lapse for the duration of the FMLA leave. If the employee returns from FMLA leave, all such insurance, pension, and other benefits shall be restored without any break in service. An employee shall not accrue any credit toward vacation or other benefits based upon time worked for the time that he or she is on FMLA leave.

### H. Return to Work / Fitness-for-Duty Certification:

Consistent with the Library's practice, before returning to work following a medical leave due to the employee's serious health condition, the employee will be required to present a fitness-for-duty certification from his or her health care provider that the employee is medically able to resume work and to perform the essential functions of his or her job. If the date on which an employee is scheduled to return to work from an FMLA leave changes, the employee is required to give notice of the change, if foreseeable, to the Library within two business days of the change. Subject to the limitations below, an employee returning from FMLA leave will be restored to the position of employment held when the leave commenced or to an equivalent position. Job restoration may be denied if conditions unrelated to the FMLA leave have resulted in the elimination of the employee's position or if the employee qualifies as a "key employee" (generally the highest paid ten per cent of the workforce). Key employees may be denied job restoration if it would cause substantial and grievous economic injury to the Library, in which case the key employee will be notified of this decision. In summary, upon expiration of a FMLA leave, an employee

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who returns to work shall be restored to the same or an equivalent job, if the employee shall have:

1. Called [DESIGNATED LEAVE ADMINISTRATOR] in accordance with terms above;
2. Furnished [DESIGNATED LEAVE ADMINISTRATOR] with proper certifications and recertifications in accordance with terms above;
3. Submitted to any second or third examination by a health care provider upon request of the Library;
4. Furnished [DESIGNATED LEAVE ADMINISTRATOR] with a medical certification of the employee's ability to return to work and to perform the essential functions of the job; and
5. Returned to work immediately upon expiration of the FMLA leave.

Failure to call [DESIGNATED LEAVE ADMINISTRATOR] weekly to provide the required medical recertification or to return to work immediately upon expiration of a FMLA leave may result in termination of the employee. Failure to furnish a fitness-for-duty certification of the employee's ability to return to work and to perform the essential functions of the job may result in the delay of job restoration or the termination of the employee.

### I. Questions:

Questions about this policy or eligibility for FMLA leave should be directed to [DESIGNATED LEAVE ADMINISTRATOR].

In seeking medical certification under the FMLA, employers must be mindful that the Genetic Information Nondiscrimination Act of 2008 (GINA) makes it illegal for employers to discriminate against applicants or employees because of their “genetic information.” Therefore any request for medical certification should include the following language:

To comply with GINA, we are asking that you not provide any genetic information when responding to [a] [this] request for medical information. “Genetic information,” as defined by GINA, includes an

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individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

This written warning creates a "safe harbor" for employers who inadvertently receive genetic information. If the employer previously provided this warning to the applicant or employee then the employer will not be found to be in violation of GINA. Consequently, employers that adopt this language now may avoid unnecessary litigation and future legal expenses.

### **Timekeeping**

Maintaining accurate records of time worked is necessary to comply with federal labor laws. Employees who are not exempt under the Fair Labor Standards Act are entitled to overtime compensation for any hours worked beyond forty in a single workweek. 29 U.S.C. § 201 *et seq.* For more information on which employees are nonexempt, visit the United States Department of Labor's Website (<http://www.wagehour.dol.gov>).

The library's policy should explain the procedure that is used to keep time records. Employees must be notified of their responsibilities in maintaining accurate time records, but simply delegating this responsibility to the employees in the written policy does not absolve library management from overseeing the timekeeping process.

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### Model Policy 413: Timekeeping

Accurately recording time worked is the responsibility of every nonexempt employee. Federal wage and hour laws require the Library to keep an accurate record of time worked in order to calculate employee pay and benefits. Time worked is all the time actually spent on the job performing assigned duties.

Employees should accurately record the time they begin and end their work, as well as the beginning and ending time of each meal period. They should also record the beginning and ending time of any split shift or departure from work for personal reasons.

Altering, falsifying, tampering with time records, or recording time on another employee's time record may result in disciplinary action, up to and including termination of employment.

It is the employee's responsibility to sign his or her time records to certify the accuracy of all time recorded. The supervisor will review and then sign the time record before submitting it for payroll processing.

### Overtime

The Fair Labor Standards Act requires payment of overtime wages at the rate of at least one and one-half times the regular hourly rate for every hour over forty worked during one workweek. 29 U.S.C. § 201 *et seq.* Employees of public agencies (public library employees) may be rewarded for overtime through compensatory time off (at a rate of 1.5 hours/1 hour overtime) in lieu of monetary payment. 29 U.S.C. § 207(o). However, the employer and employee must agree that overtime will be rewarded with compensatory time off before the overtime is worked. A written policy provided to the employee in advance of the overtime work is sufficient.

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### Model Policy 414: Overtime

The Library expects that staff will be able to perform required work within a forty-hour workweek. However, when employees who are not exempt from the provisions of the Fair Labor Standards Act work overtime, compensatory time will be awarded at a rate of one and one-half comp hours for every hour worked beyond forty in the course of a workweek. The Library does not pay for overtime in the form of cash.

All overtime work must be approved in advance by the Library Director. Failure to receive preapproval can result in disciplinary action including termination.

### Performance Evaluations

Employee performance evaluation serves as a means to measure progress and to communicate with employees. The employee performance evaluation process, including goal setting, performance measurement, regular performance feedback, employee recognition, and documentation of employee progress, is an important component to managing staff such that the overall goals of the organization are achieved. The performance evaluation process helps employees visualize how their jobs and expected contributions fit within the bigger picture of the organization. In the event that an employee is not succeeding or improving in his or her job performance, the performance evaluation documentation can be used to develop a performance improvement plan. This plan provides more detailed goals with more frequent feedback to an employee who is struggling to perform. The goal is improvement, but non-performance can lead to disciplinary action, up to termination. Because the prospect of performance evaluation may cause some

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employees anxiety, carefully explaining the process within the library's personnel policies is recommended.

### Model Policy 415: Performance Evaluations

All Library employees will receive periodic performance reviews. Your review will be conducted by your supervisor. Your first performance evaluation will occur after completion of your orientation period. After that review, performance evaluations will be conducted at least annually. The frequency of performance evaluations may vary depending upon length of service, job position, past performance, changes in job duties, or recurring performance problems.

Your performance evaluation will include factors such as the quality and quantity of your work, your attendance record, your knowledge of the job, your initiative, your work attitude, and your attitude towards others. The performance evaluation should help you to become aware of your progress, areas of needed improvement, and objectives or goals recommended for future work performance. Positive performance evaluations do not guarantee increases in compensation. After the performance review with your manager, you will be asked to sign the evaluation report simply to acknowledge that it has been presented to you and discussed with you by your supervisor and that you are aware of its contents.

### Complaint Procedure

Obviously, it would be ideal if library employees worked happily side-by-side and every library was a productive, harmonious place with zero discontent. The likelihood of this scenario is not great when the reality of human personalities is taken into account. An employee grievance or complaint policy is a step-by-step method in which someone who has a complaint can alert management about the problem or issue. A fast and effective solution benefits all involved.

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### Model Policy 416: Complaint Procedure

Employees are encouraged to communicate directly with one another in order to assure prompt discontinuation of any behavior found to be offensive. The Library supports the rights of each employee to communicate directly with other employees in requesting that offensive conduct be discontinued. However, informal redress of complaints is not required, and the complaining employee may proceed to file a formal complaint in any situation in which informal redress is not feasible or desirable.

No employee or applicant is required to endure workplace harassment. An employee who is unable to resolve the problem or who does not wish to discuss the issue with the offending party should report unwelcome harassing conduct immediately to his or her immediate supervisor or the Library Director. If the immediate supervisor is the alleged source of the harassment, the employee should skip that level of management and report the conduct to the next level supervisor or to the Library Director. The complaint will be immediately investigated, and appropriate corrective action will be taken.

If an employee claims the Director is the source of the harassment, the employee should report the conduct to his or her immediate supervisor or to the Chairman of the Library's Board of Trustees. The Chairman will take immediate steps to investigate the complaint, independent from the Director, and prompt appropriate corrective action will be taken.

In the course of the investigation, the complainant will be requested to submit a written statement describing in detail the alleged harassment and the identity of any individuals that may have relevant information concerning the complaint. A prompt investigation, however, is not contingent on the submitting employee's written statement. In determining whether the conduct is sufficiently severe or pervasive to create a hostile work environment, the Library will evaluate the behavior from the objective standpoint of a "reasonable

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person.” The Library will consider the context in which the alleged harassment took place and examine the behavior using the perspective of a reasonable person’s reaction to a similar environment under similar circumstances. Corrective action will reflect the severity of the conduct. In all circumstances, the complainant will be informed of the results of any investigation and the action taken.

### **Discipline**

There is no single correct approach for handling employee discipline.

Competing interests make it prudent for library administrators to analyze what they expect a discipline policy to accomplish. The goal of progressive discipline is twofold. First, it protects the organization and its supervisory personnel from claims of employment discrimination by consistent application of uniform personnel policies with appropriate documentation. Second, it provides employees with notice when performance standards are not met or when standards of conduct are violated. Additionally, progressive discipline advises the employee of the action needed to improve the deficiency and a time table for improvement.

A progressive discipline policy is not required. If the library board elects to adopt a progressive discipline policy, however, safeguards should be included in order to prevent an inadvertent modification of the at-will employment status of library employees.

There is no set number of steps for a progressive discipline policy. Typically there are at least three steps: caution, warning, and termination. Regardless of the details selected for the library’s discipline policy, it should be a clear and specific statement of procedure. Likewise, it must be uniformly applied.

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### Model Policy 417: Discipline

The Library Board has adopted a progressive discipline policy to address employee and employment-related problems. This policy applies to all employee conduct that the Library, in its sole discretion, determines must be addressed through disciplinary procedures. Of course, no discipline policy can be expected to address each and every situation requiring corrective action that may arise in the workplace. Therefore, the Library takes a comprehensive approach regarding discipline and will attempt to consider all relevant factors before making decisions regarding discipline.

Most often, employee conduct that warrants discipline results from unacceptable behavior, poor performance, or violation of the Library's policies, practices or procedures. However, discipline may be issued for conduct that falls outside of those identified areas. Equally important, the Library need not resort to progressive discipline but may take whatever action it deems necessary to address the issue at hand. This may mean that more or less severe discipline is imposed in a given situation. Likewise, some Library policies, like sexual harassment and attendance, contain specific discipline procedures.

Progressive discipline may be imposed upon employees even when the conduct that leads to more serious discipline differs from the prior conduct that resulted in less severe discipline. That is, violations of different rules shall be considered the same as repeated violations of the same rule for purposes of progressive action.

The Library will normally adhere to the following progressive disciplinary process, however, the Library is not bound to follow this process; the appropriate disciplinary action remains in the sole discretion of the Library Director.

1. Verbal Caution: As the first step in the progressive discipline policy, a verbal caution is meant to alert the employee that a problem may exist or that one has been identified, which must be addressed. Verbal

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warnings will be documented and maintained by your supervisor. A verbal caution remains in effect for [specify time (e.g., three months)].

2. Verbal Warning: A verbal warning is more serious than a verbal caution. Verbal warnings are documented and placed in the employee's personnel file and will remain in effect for [specify time (e.g., three months)].

3. Written Warning: A written warning is more serious than a verbal warning. Written warnings are maintained in an employee's personnel file and remain in effect for [specify time (e.g., three months)].

4. Suspension: A suspension without pay is more serious than a written warning. An employee's suspension will be documented and, regardless of the length of the suspension issued, will remain in effect for [specify time (e.g., three months)].

5. Termination: Involuntary separation from employment is the most serious form of discipline.

Again, although the Library will generally take disciplinary action in a progressive manner, it may, in its sole discretion, decide whether and what disciplinary action will be taken in any given situation. This progressive discipline policy does not alter the at-will employment status of Library employees.

### **Termination of Employment**

A worker who voluntarily leaves the employ of the library can be a valuable resource from whom to learn about ways to improve the organization. Time should be taken to debrief the departing employee about his or her experience as an employee. The library's policy on voluntary termination should specify the length of

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notice to be given, provide for how leave and comp time balances will be handled, and require resignation in writing.

When employees are terminated for cause, there are steps to be taken to avoid costly litigation. A public library is an instrument of the state government; therefore, its employees have a legally recognized “liberty interest” in their jobs. Liberty interests cannot be deprived without certain procedural due process. This means, the employee is entitled to due process of law before being terminated. The library’s policy regarding termination should set forth the process that will be afforded, and the policy should be strictly followed.

### Model Policy 418: Termination of Employment

Employees who resign to accept employment with another business or to leave the workforce must give written notice two weeks prior to the last work day in order to leave in good standing. Employees who leave in good standing will be paid for unused vacation and compensatory time on their final paycheck and will be eligible for rehire in the future. An exit interview will be scheduled with the Library Director on the last day of employment. All Library property, including keys and identification cards, must be returned before issuance of the final paycheck.

Employees will receive oral and written counseling to improve substandard work before termination if work does not improve. Serious offenses, such as theft, use of drugs or alcohol while at work, and physical assault, may result in immediate termination without counseling. Employees who are terminated may appeal the decision with the [governing authority or the] Library Board within five days of termination. An appeal must be made in writing.

If budget cuts necessitate a reduction in staffing levels, the Library Director will determine which positions can be cut to create the least overall negative effect on library services. The Director’s

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plan will be submitted to [governing authority] for approval before implementation. Longevity will be a primary factor in retaining staff, and whenever possible, staff will be moved into vacant positions for which they are qualified. Employees who are laid off will be paid for all unused vacation, compensatory time, and sick leave.

### Volunteers

As a cornerstone of the community, the public library is often the beneficiary of volunteers, which increases the ability of the library to provide quality service. A policy that expresses the library's desire to incorporate volunteers into the organization is a good idea. From a legal standpoint, it is important to set out the prohibition on paid staff "volunteering" their time. Under the Fair Labor Standards Act, a paid employee cannot be a volunteer when the nature of the work done is related or similar to that for which he or she is paid. 29 U.S.C. § 201 *et seq.*

#### Model Policy 419: Use of Volunteers

The Library welcomes and encourages members of the community to volunteer their time and talents to enrich and expand library services. Volunteers are expected to conform to all policies of the Library and the rules outlined in the volunteer handbook, and they are selected and retained for as long as the library needs their services. Volunteers may be used for special events, projects, and activities, or on a regular basis to assist staff. Services provided by volunteers will supplement, but not replace, regular services, and volunteers will not be used in places of hiring full- or part-time staff. Volunteers may apply for paid positions under the same conditions as other outside applicants. In accordance with labor laws, paid staff may not volunteer their services to the library when those services are within the staff member's job description.

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### Personnel Records

Creating and maintaining employee personnel files are vital aspects of management. This record keeping allows the employer to have all the important documents relating to each employee in one place, easily available when it is time to make decisions on promotions or layoffs, to file tax returns, or to comply with government audits. If the library must terminate a problem employee, careful documentation will serve as protection for the organization in terms of legal challenges. In the case of a public library, a governmental entity, those personnel files are subject to Georgia's Open Records Act. O.C.G.A. § 50-18-70.

The library's policy should specify what will be maintained in an employee personnel file, instruct employees on how to obtain access to their files, specify what other library employees and board members may view an employee's file, and notify employees that their files are subject to disclosure under Georgia law.

#### Model Policy 420: Personnel Records

The types of documents that will be maintained in employee personnel files include the following:

1. Application for Employment;
2. Resume or Curriculum Vitae;
3. Policy and Procedure Acknowledgements;
4. Training Acknowledgements;
5. Payroll Authorization Records, including direct deposit;
6. Vacation Records;
7. Performance Evaluations;
8. Corrective Action Records;
9. Termination Notices (including DOL 800 for Georgia employees);
10. Internal Complaints/Grievances and additional documentation;
11. Appropriate insurance, retirement, and other benefits information;

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12. Diplomas, certificates, training records, and related personal accomplishment documentation;

13. Tax forms (federal and state), compensation records, pay increases, overtime, employee loans/advances, garnishment notifications, etc.; and

14. Benefits Information/Elections.

Periodically, the Library may receive inquiries from employees or others not employed by the Library requesting information from an employee's personnel file. Personal information maintained about an employee shall be made available for inspection only with the employee's consent, except for information requested through other lawful means (i.e., Georgia Open Records Act). Employees may contact the Library Director or human resources coordinator to arrange for an inspection of their own personnel records. Personnel records shall be made available for inspection by an employee only in the presence of a management representative or a designated human resources representative.

The Library Director shall decide when employee personnel records will be released in accordance with the Georgia Open Records Act. As a general rule, most documents that may be found in personnel files must be disclosed, but there are exceptions. The Open Records Act protects the following types of information that may be found in employee personnel files and that should be redacted:

1. Social Security number;
2. Financial data or information;
3. Mother's birth name;
4. Bank account information;
5. Month and day of birth;
6. Credit card information;
7. Insurance and medical information;
8. Debit card information;
9. Home address and telephone number.

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In addition to the redactions listed above, the following information is exempt from release:

1. Individual employee benefits selections and payroll deductions;
2. Birth certificates;
3. Military discharge forms;
4. Financial records (i.e., bank account numbers);
5. Health insurance records;
6. Medical records.

### Part 5: Workers' Compensation Benefits

All workers' compensation issues are governed by Georgia's Workers' Compensation Act. O.C.G.A. § 34-9-1 *et seq.* (Hiers & Potter, 2007).

#### Model Policy 501: Workers' Compensation Benefits

An employee injured on the job has certain rights, benefits, and responsibilities. The Library, as an employer, also has obligations and responsibilities regarding all its employees. It is the goal of the Library to assist job-related injured workers in receiving immediate and quality medical care, to administer workers' compensation claims from the initial injury until the closing of the claim, and to safely return lost-time employees to productive employment.

Employers are required to post notice of employees' rights and responsibilities with regard to workers' compensation issues. In addition to posting these notices on staff bulletin boards, including the notices within the employee handbook or manual would be helpful to employees. Visit Georgia's State Board of Workers' Compensation to obtain the most up-to-date copy of the Injured Worker's Bill of Rights, <https://sbwc.georgia.gov/board-forms>.

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### Part 6: Miscellaneous Employee Policies

#### Chain of Command

Many personnel issues involve reporting occurrences to one's supervisor or to the library director. In a situation where the supervisor or other superior, including the library director, is the source of the issue, employees will need an alternate avenue to seek assistance. Therefore, personnel policies should include a chain of command that explains the structure of the supervisory system and provides alternatives to employees when their own supervisor is involved.

#### Model Policy 601: Chain Of Command

For questions about personnel policies, suggestions, unresolved evaluation disagreements, and any other concerns the employee may have, the employee should use the following Chain of Command:

First - Immediate Supervisor

Second - Business Office Manager

Third - Library Director

In the event an issue involves a superior in an employee's direct Chain of Command, the employee should skip to the next level in the Chain. If an issue remains unresolved after following this Chain of Command, the employee may contact the Chair of the Board of Trustees' Personnel Committee.

#### Mandatory Reporting of Child Abuse

In 2012, Georgia's mandatory reporting law regarding child abuse or neglect expanded to apply to more than simply teachers and physicians. Under the law, employees or volunteers of any library that serves children are now mandatory reporters. Failure to fulfill these reporting obligations is a misdemeanor.

Accordingly, it is incumbent upon the library to inform its employees of the law as

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well as provide guidelines on what actions an employee who suspects child abuse should take. For more information, *see* the website for Georgia's Department of Human Services at <https://dhs.georgia.gov/>.

### Model Policy 602: Reporting Child Abuse/Neglect

Under Georgia law, any person employed by or volunteering at an organization, public or private, that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children is a mandatory reporter of child neglect or abuse. O.C.G.A. § 19-7-5. Failure to do so could result in fines or imprisonment.

Because the Library provides services to children, its employees are obligated under the mandatory reporting requirements of this law. In the event that an employee suspects that a child is in immediate danger, that employee should notify the police. In all other cases where abuse or neglect is suspected, the employee must notify the Library Director, who will in turn report the abuse to the county Department of Family and Children Services (DFACS). If the Library Director is inaccessible or for some reason the employee is unable to communicate with the Director in a timely manner, the employee should make the report directly to the county DFACS.

### Public Records

Because the public library is a governmental entity, records kept in the ordinary course of business are subject to inspection under Georgia's Open Records Act. Employees should be made aware that any records they create at work may fall under this law.

### Model Policy 603: Notification of Open Records Application

Library employees should be aware that Georgia law provides for public records to be available for inspection by any person, subject to

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certain exceptions. Employees routinely create records, such as incident reports, emails, voicemails that may be subject to inspection according to O.C.G.A. §§ 50-18-70 to 50-18-77.

### **Employment References**

Former employees may provide their library supervisors as references in seeking other employment. Library administrators need to plan ahead for how these requests will be handled.

#### **Model Policy 604: References to Prospective Employers**

It is the Library's policy to disclose, in response to a prospective employer's request for an employment reference, only the following information about current or former employees: The dates of employment, description of the duties performed, and salary information. All requests for employment references shall be forwarded to the [Director or Human Resources administrator]. The [Director or Human Resources administrator] is the only person authorized to respond to the request. Responses to employment reference requests will be given only to the appropriate person asking for the information and only after the [Director / Human Resources administrator] has verified the identity of the requestor. Prior to responding to the request, the [Director / Human Resources administrator] shall also verify that the former or current employee is aware of and does not object to the Library's responding to the reference request.

### **Outside Employment**

Employees may wish to obtain employment in addition to their jobs with the library. There are two issues about which the library should be concerned in this instance. First, conflicts of interest between the employee's additional job and the library must be avoided. Second, the additional employment must not interfere with

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the employee's responsibilities to the library. A policy on outside employment should address these two issues, reserving the right of the library to prohibit the additional employment should a problem arise in either area.

### Model Policy 605: Outside Employment; Dual Employment

Employees are allowed to hold outside employment as long as it does not interfere with their Library responsibilities. Employees are prohibited from engaging in outside employment activities while on the job or using Library time, supplies, or equipment in the outside employment activities. The Library Director may request employees to restrict outside employment if the quality of Library work diminishes. Any employee who holds an interest in, or is employed by, any business doing business with the Library must submit a written notice of these outside interests to the Library Director.

### Continuing Education

“Training is a never-ending process.” (Stueart & Moran, 2002, 246). Georgia Public Library Service's (2015) Standards require libraries to offer at least 10 hours per year of continuing education opportunities for all staff. The optimal level is 40 hours per year.

### Model Policy 606: Employee Continuing Education

It is the policy of the Library to encourage employees to improve their knowledge and skills in areas that directly relate to the work of the Library. Therefore, within budgetary limitations, the Library will reimburse all or some of the educational expenses for classes, workshops, and seminars incurred by employees as recommended by the Library Director. Additionally, the Library will provide an annual minimum of ten hours of staff development opportunities in house. Documentation of successful attendance and completion of courses will be placed in the employee's personnel file.

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### Part 7: Checklists

Use the following checklists as a guide for developing, revising, and updating personnel policies for public libraries.

#### General Considerations

- Have regular practices and customs relating to employment issues been reduced to written policies?
- Have any conflicts between policies of the governing authority (county government) and the library's policies been resolved?
- Has the Board of Trustees properly adopted all personnel policies?
- Have all employees been provided with a copy of the library's written personnel policies?
- Does the library maintain a copy of a signed form from all employees acknowledging receipt of the library's written personnel policies?
- Does the library have a method of notifying employees about updates and revisions to its personnel policies?
- Does the library conduct informational or training sessions to educate employees and entertain their questions on the library's personnel policies?

#### Policy Content

Not all public libraries in Georgia are the same; therefore, there is no uniform set of personnel policies that will fit every library in the state of Georgia. Below is a checklist of typical policies that should be, at the very least, considered by library boards. With the exception of the mandatory notifications related to Family and Medical Leave (*see* Model Policy 412, herein), no particular policies are “required” in the legal sense. Moreover, any given organization may have a much more extensive list of policies—that is also permissible. What is important is that each library system has written policies that reflect the actual practices to which it adheres.

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- Employee/Employer Relationship
- At-Will Employment
- Employee handbook is NOT contract
- Conditions of Employment
- Legal Compliance: Discrimination, Harassment, Retaliation
- Employee safety
- Drug-Free/Smoke-Free workplace
- Code of Employee Conduct
- General prohibitions
- Personal appearance
- Confidentiality of patron records
- Personal use of library equipment and materials
- Solicitation
- Political Activities
- Socializing
- Fraternization
- Visitors in the workplace
- Employment Practices
- Recruitment and hiring
- Georgia's law on immigration status
- Nepotism
- Salary
- Benefits
- Attendance and Leave
- FAMILY MEDICAL LEAVE ACT---MANDATORY NOTICE REQUIREMENT
- Timekeeping
- Overtime
- Discipline
- Complaint procedure
- Termination
- Use of volunteers
- Personnel files
- Workers' Compensation
- Employee rights, benefits, and responsibilities
- Chain of Command
- Mandatory reporting of child abuse/neglect
- Public records
- Reference requests

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## Appendix A: Model Personnel Policies

- Outside employment
- Continuing Education

### Keeping Policies Current

- How often will the library's personnel policies be re-evaluated?
- During the in-between times, is there a staff or board member who monitors legal changes that could implicate the library's policies?

### References

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## Appendix B: Georgia's Library Laws

### **Appendix B: Georgia's Library Laws Current Through 2017 Regular Session**

O.C.G.A. § 13-10-91	Georgia Security & Immigration Compliance Act
O.C.G.A. § 19-7-5	Child Abuse, Mandatory Reporting
O.C.G.A. § 20-2-305	County & Regional Public Libraries
O.C.G.A. § 20-2-320	Quality Basic Education Information Steering Committee; Identification of Data to Implement Quality Basic Education Program; State-wide Comprehensive Educational Information Network
O.C.G.A. § 20-3-39	Transfer of Functions & Personnel Relating to Public Libraries from the Technical College System of Georgia to Board of Regents
O.C.G.A. § 20-5-1	Policy as to Library Service
O.C.G.A. § 20-5-2	Powers and Duties of Board of Regents; Acceptance of Gifts; State Library Commission Abolished
O.C.G.A. § 20-5-3	Funds for Public Library Services
O.C.G.A. § 20-5-4	Reports of Libraries
O.C.G.A. § 20-5-5	Acceptable Use Policy for Internet Usage at Public Libraries
O.C.G.A. § 20-5-20	City Public Libraries: Establishment & Maintenance
O.C.G.A. § 20-5-21	City Public Libraries: Disbursement of Appropriations
O.C.G.A. § 20-5-22	City Public Libraries: Donations
O.C.G.A. § 20-5-23	City Public Libraries: Duties of Board of Trustees
O.C.G.A. § 20-5-24	City Public Libraries: Powers of the City
O.C.G.A. § 20-5-40	County & Regional Public Libraries: Establishment
O.C.G.A. § 20-5-41	County & Regional Public Libraries: Board of Trustees
O.C.G.A. § 20-5-42	County & Regional Public Libraries: Membership, Terms, Removal & Vacancies in Board of Trustees

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O.C.G.A. § 20-5-43	County & Regional Public Libraries: Duties & Responsibilities of Board of Trustees
O.C.G.A. § 20-5-44	County & Regional Public Libraries: Compensation of Board of Trustees
O.C.G.A. § 20-5-45	County & Regional Public Libraries: Directors; Qualifications, Duties & Responsibilities
O.C.G.A. § 20-5-46	County & Regional Public Libraries: Reports
O.C.G.A. § 20-5-47	County & Regional Public Libraries: Constitutions & Bylaws for Library Boards
O.C.G.A. § 20-5-48	County & Regional Public Libraries: Ownership of Property Used for Library Purposes
O.C.G.A. § 20-5-49	County & Regional Public Libraries: Contracts & Agreements of Library Board
O.C.G.A. § 20-5-50	County & Regional Public Libraries: Bonding of Library Boards
O.C.G.A. § 20-5-51	County & Regional Public Libraries: Dissolution of Library Systems
O.C.G.A. § 20-5-52	County & Regional Public Libraries: Unlawful Taking or Destruction of Materials
O.C.G.A. § 20-5-53	County & Regional Public Libraries: Failure to Return Materials
O.C.G.A. § 20-5-54	County & Regional Public Libraries: Concealing or Removing Books or Other Property
O.C.G.A. § 20-5-55	County & Regional Public Libraries: Civil Liability of Agents & Employees
O.C.G.A. § 20-5-56	County & Regional Public Libraries: Certification of Librarians
O.C.G.A. § 20-5-57	County & Regional Public Libraries: Forfeiture of State & Federal Aid
O.C.G.A. § 20-5-58	County & Regional Public Libraries: Existing Library Systems

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- O.C.G.A. § 20-5-59 County & Regional Public Libraries: Applicability
- O.C.G.A. § 20-5-60 "State Library Agency" Defined
- O.C.G.A. § 20-5-61 Interstate Library Compact
- O.C.G.A. § 20-5-62 Limitations
- O.C.G.A. § 20-5-63 Interstate Library Districts Lying Partly within this State
- O.C.G.A. § 20-5-64 Appointment of Compact Administrator
- O.C.G.A. § 20-5-65 Withdrawal from the Compact
- O.C.G.A. § 24-12-30 Confidential Nature of Library Records (formerly O.C.G.A. § 24-9-46)
- O.C.G.A. § 36-34-5.1 Municipal Corporations Authorized to Enter into Leases for Purposes of Providing Library Service
- O.C.G.A. § 36-70-2 Planning: Definitions
- O.C.G.A. § 36-71-2 Development Impact Fees: Definitions
- O.C.G.A. § 36-76-9 Expedited Franchising of Cable & Video Services: Demarcation Point Service Outlet; Service to Schools & Libraries
- O.C.G.A. § 42-1-15 Restrictions on Residence of or Loitering by Registered Sex Offender
- O.C.G.A. § 43-24-1 Professions & Businesses; Librarians; Definitions
- O.C.G.A. § 43-24-2 State Board for the Certification of Librarians; Creation; Membership; Appointment; Terms of Office; Expenses; Vacancies
- O.C.G.A. § 43-24-3 Jurisdiction of Division Director
- O.C.G.A. § 43-24-4 Only Licensed Librarians to be Employed; Exceptions
- O.C.G.A. § 43-24-5 Certificates; Grades; Examinations
- O.C.G.A. § 43-24-6 Applications for Certificates; Fees; Renewals; Duplicate Certificates

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O.C.G.A. § 43-24-7 Continuing Education

Georgia Smokefree Air Act (O.C.G.A. §§ 31-12A-1 through 31-12A-13)

Open Meetings Act (O.C.G.A. §§ 50-14-1 through 50-14-6)

Open Records Act (O.C.G.A. §§ 50-18-70 through 50-18-74)

## Appendix B: Georgia's Library Laws

### **Title 13. Contracts**

#### **Chapter 10. Contracts for Public Works**

#### **Article 3. Federal Work Authorization Program**

#### **O.C.G.A. § 13-10-91. Registration and participation of contractors; forms, rules, and regulations**

(a) Every public employer, including, but not limited to, every municipality and county, shall register and participate in the federal work authorization program to verify employment eligibility of all newly hired employees. Upon federal authorization, a public employer shall permanently post the employer's federally issued user identification number and date of authorization, as established by the agreement for authorization, on the employer's website; provided, however, that if a local public employer does not maintain a website, then the local government shall submit such information to the Carl Vinson Institute of Government of the University of Georgia to be posted by the institute on the website created for local government audit and budget reporting. The Carl Vinson Institute of Government of the University of Georgia shall maintain the information submitted and provide instructions and submission guidelines for local governments. State departments, agencies, or instrumentalities may satisfy the requirement of this Code section by posting information required by this Code section on one website maintained and operated by the state.

(b)(1) A public employer shall not enter into a contract for the physical performance of services unless the contractor registers and participates in the federal work authorization program. Before a bid for any such service is considered by a public employer, the bid shall include a signed, notarized affidavit from the contractor attesting to the following:

(A) The affiant has registered with, is authorized to use, and uses the federal work authorization program;

(B) The user identification number and date of authorization for the affiant;

(C) The affiant will continue to use the federal work authorization program throughout the contract period; and

(D) The affiant will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the same information required by subparagraphs (A), (B), and (C) of this paragraph.

An affidavit required by this subsection shall be considered an open public record once a public employer has entered into a contract for physical performance of services; provided, however,

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that any information protected from public disclosure by federal law or by Article 4 of Chapter 18 of Title 50 shall be redacted. Affidavits shall be maintained by the public employer for five years from the date of receipt.

(2) A contractor shall not enter into any contract with a public employer for the physical performance of services unless the contractor registers and participates in the federal work authorization program.

(3) A subcontractor shall not enter into any contract with a contractor unless such subcontractor registers and participates in the federal work authorization program. A subcontractor shall submit, at the time of such contract, an affidavit to the contractor in the same manner and with the same information required in paragraph (1) of this subsection. It shall be the duty of any subcontractor receiving an affidavit from a sub-subcontractor to forward notice to the contractor of the receipt, within five business days of receipt, of such affidavit. It shall be the duty of a subcontractor receiving notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor.

(4) A sub-subcontractor shall not enter into any contract with a subcontractor or sub-subcontractor unless such sub-subcontractor registers and participates in the federal work authorization program. A sub-subcontractor shall submit, at the time of such contract, an affidavit to the subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract, in the same manner and with the same information required in paragraph (1) of this subsection. It shall be the duty of any sub-subcontractor to forward notice of receipt of any affidavit from a sub-subcontractor to the subcontractor or sub-subcontractor with whom such receiving sub-subcontractor has privity of contract.

(5) In lieu of the affidavit required by this subsection, a contractor, subcontractor, or sub-subcontractor who has no employees and does not hire or intend to hire employees for purposes of satisfying or completing the terms and conditions of any part or all of the original contract with the public employer shall instead provide a copy of the state issued driver's license or state issued identification card of such contracting party and a copy of the state issued driver's license or identification card of each independent contractor utilized in the satisfaction of part or all of the original contract with a public employer. A driver's license or identification card shall only be accepted in lieu of an affidavit if it is issued by a state within the United States and such state verifies lawful immigration status prior to issuing a driver's license or identification card. For purposes of satisfying the requirements of this subsection, copies of such driver's license or identification card shall be forwarded to the public employer, contractor, subcontractor, or sub-subcontractor in the same manner as an affidavit and notice of receipt of

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an affidavit as required by paragraphs (1), (3), and (4) of this subsection. Not later than July 1, 2011, the Attorney General shall provide a list of the states that verify immigration status prior to the issuance of a driver's license or identification card and that only issue licenses or identification cards to persons lawfully present in the United States. The list of verified state drivers' licenses and identification cards shall be posted on the website of the State Law Department and updated annually thereafter. In the event that a contractor, subcontractor, or sub-subcontractor later determines that he or she will need to hire employees to satisfy or complete the physical performance of services under an applicable contract, then he or she shall first be required to comply with the affidavit requirements of this subsection.

(6) It shall be the duty of the contractor to submit copies of all affidavits, drivers' licenses, and identification cards required pursuant to this subsection to the public employer within five business days of receipt. No later than August 1, 2011, the Departments of Audits and Accounts shall create and post on its website form affidavits for the federal work authorization program. The affidavits shall require fields for the following information: the name of the project, the name of the contractor, subcontractor, or sub-subcontractor, the name of the public employer, and the employment eligibility information required pursuant to this subsection.

(7)(A) Public employers subject to the requirements of this subsection shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this subsection. Subject to available funding, the state auditor shall conduct annual compliance audits on a minimum of at least one-half of the reporting agencies and publish the results of such audits annually on the Department of Audits and Accounts' website on or before September 30.

(B) If the state auditor finds a political subdivision to be in violation of this subsection, such political subdivision shall be provided 30 days to demonstrate to the state auditor that such political subdivision has corrected all deficiencies and is in compliance with this subsection. If, after 30 days, the political subdivision has failed to correct all deficiencies, such political subdivision shall be excluded from the list of qualified local governments under Chapter 8 of Title 50 until such time as the political subdivision demonstrates to the state auditor that such political subdivision has corrected all deficiencies and is in compliance with this subsection.

(C)(i) At any time after the state auditor finds a political subdivision to be in violation of this subsection, such political subdivision may seek administrative relief through the Office of State Administrative Hearings. If a political subdivision seeks administrative relief, the time for correcting deficiencies shall be tolled, and any action to exclude the political subdivision from the list of qualified governments under Chapter 8 of Title 50 shall be suspended until such time as a final ruling upholding the findings of the state auditor is issued.

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(ii) A new compliance report submitted to the state auditor by the political subdivision shall be deemed satisfactory and shall correct the prior deficient compliance report so long as the new report fully complies with this subsection.

(iii) No political subdivision of this state shall be found to be in violation of this subsection by the state auditor as a result of any actions of a county constitutional officer.

(D) If the state auditor finds any political subdivision which is a state department or agency to be in violation of the provisions of this subsection twice in a five-year period, the funds appropriated to such state department or agency for the fiscal year following the year in which the agency was found to be in violation for the second time shall be not greater than 90 percent of the amount so appropriated in the second year of such noncompliance. Any political subdivision found to be in violation of the provisions of this subsection shall be listed on [www.open.georgia.gov](http://www.open.georgia.gov) or another official state website with an indication and explanation of each violation.

(8) Contingent upon appropriation or approval of necessary funding and in order to verify compliance with the provisions of this subsection, each year the Commissioner shall conduct no fewer than 100 random audits of public employers and contractors or may conduct such an audit upon reasonable grounds to suspect a violation of this subsection. The results of the audits shall be published on the [www.open.georgia.gov](http://www.open.georgia.gov) website and on the Georgia Department of Labor's website no later than December 31 of each year. The Georgia Department of Labor shall seek funding from the United States Secretary of Labor to the extent such funding is available.

(9) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement in an affidavit submitted pursuant to this subsection shall be guilty of a violation of Code Section 16-10-20 and, upon conviction, shall be punished as provided in such Code section. Contractors, subcontractors, sub-subcontractors, and any person convicted for false statements based on a violation of this subsection shall be prohibited from bidding on or entering into any public contract for 12 months following such conviction. A contractor, subcontractor, or sub-subcontractor that has been found by the Commissioner to have violated this subsection shall be listed by the Department of Labor on [www.open.georgia.gov](http://www.open.georgia.gov) or other official website of the state with public information regarding such violation, including the identity of the violator, the nature of the contract, and the date of conviction. A public employee, contractor, subcontractor, or sub-subcontractor shall not be held civilly liable or criminally responsible for unknowingly or unintentionally accepting a bid from or contracting with a contractor, subcontractor, or sub-subcontractor acting in violation of this subsection. Any contractor, subcontractor, or sub-subcontractor found by the Commissioner to have violated this

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subsection shall, on a second or subsequent violations, be prohibited from bidding on or entering into any public contract for 12 months following the date of such finding.

(10) There shall be a rebuttable presumption that a public employer, contractor, subcontractor, or sub-subcontractor receiving and acting upon an affidavit conforming to the content requirements of this subsection does so in good faith, and such public employer, contractor, subcontractor, or sub-subcontractor may rely upon such affidavit as being true and correct. The affidavit shall be admissible in any court of law for the purpose of establishing such presumption.

(11) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

(c) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Except as provided in subsection (e) of this Code section, the Commissioner shall prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section and publish such rules and regulations on the Georgia Department of Labor's website.

(e) The commissioner of the Georgia Department of Transportation shall prescribe all forms and promulgate rules and regulations deemed necessary for the application of this Code section to any contract or agreement relating to public transportation and shall publish such rules and regulations on the Georgia Department of Transportation's website.

(f) No employer or agency or political subdivision, as such term is defined in Code Section 50-36-1, shall be subject to lawsuit or liability arising from any act to comply with the requirements of this Code section.

*Current through 2017 Regular Session*

See Chapter 2: Employment, Legal Eligibility at § 1.04.

Newman, M.J. & Duong H. (2007). The Georgia Security and Immigration Compliance Act: Comprehensive immigration reform in Georgia—think globally . . . act locally. *Georgia Bar Journal* (13)4.

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### **Title 19. Domestic Relations Chapter 7. Parent and Child Relationship Generally Article 1. General Provisions**

#### **O.C.G.A. § 19-7-5. Reports by physicians, treating personnel, institutions and others as to child abuse; failure to report suspected child abuse**

(a) The purpose of this Code section is to provide for the protection of children. It is intended that mandatory reporting will cause the protective services of the state to be brought to bear on the situation in an effort to prevent abuses, to protect and enhance the welfare of children, and to preserve family life wherever possible. This Code section shall be liberally construed so as to carry out the purposes thereof.

(b) As used in this Code section, the term:

(1) "Abortion" shall have the same meaning as set forth in Code Section 15-11-681.

(2) "Abused" means subjected to child abuse.

(3) "Child" means any person under 18 years of age.

(4) "Child abuse" means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent or caretaker thereof;

(C) Endangering a child;

(D) Sexual abuse of a child; or

(E) Sexual exploitation of a child.

However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an abused child.

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(5) "Child service organization personnel" means persons employed by or volunteering at a business or an organization, whether public, private, for profit, not for profit, or voluntary, that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children.

(6) "Clergy" means ministers, priests, rabbis, imams, or similar functionaries, by whatever name called, of a bona fide religious organization.

(6.1) "Endangering a child" means:

(A) Any act described by subsection (d) of Code Section 16-5-70;

(B) Any act described by Code Section 16-5-73;

(C) Any act described by subsection (l) of Code Section 40-6-391; or

(D) Prenatal abuse, as such term is defined in Code Section 15-11-2.

(7) "Pregnancy resource center" means an organization or facility that:

(A) Provides pregnancy counseling or information as its primary purpose, either for a fee or as a free service;

(B) Does not provide or refer for abortions;

(C) Does not provide or refer for FDA approved contraceptive drugs or devices; and

(D) Is not licensed or certified by the state or federal government to provide medical or health care services and is not otherwise bound to follow the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws relating to patient confidentiality.

(8) "Reproductive health care facility" means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, or gynecological care and services.

(9) "School" means any public or private pre-kindergarten, elementary school, secondary school, technical school, vocational school, college, university, or institution of postsecondary education.

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(10) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not such person's spouse to engage in any act which involves:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;

(H) Defecation or urination for the purpose of sexual stimulation;

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure; or

(J) Any act described by subsection (c) of Code Section 16-5-46.

Sexual abuse shall include consensual sex acts when the sex acts are between minors if any individual is less than 14 years of age; provided, however, that it shall not include consensual sex acts when the sex acts are between a minor and an adult who is not more than four years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(11) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires a child to engage in:

(A) Prostitution, as defined in Code Section 16-6-9; or

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(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.

(c)(1) The following persons having reasonable cause to believe that suspected child abuse has occurred shall report or cause reports of such abuse to be made as provided in this Code section:

(A) Physicians licensed to practice medicine, physician assistants, interns, or residents;

(B) Hospital or medical personnel;

(C) Dentists;

(D) Licensed psychologists and persons participating in internships to obtain licensing pursuant to Chapter 39 of Title 43;

(E) Podiatrists;

(F) Registered professional nurses or licensed practical nurses licensed pursuant to Chapter 26 of Title 43 or nurse's aides;

(G) Professional counselors, social workers, or marriage and family therapists licensed pursuant to Chapter 10A of Title 43;

(H) School teachers;

(I) School administrators;

(J) School counselors, visiting teachers, school social workers, or school psychologists certified pursuant to Chapter 2 of Title 20;

(K) Child welfare agency personnel, as such agency is defined in Code Section 49-5-12;

(L) Child-counseling personnel;

(M) Child service organization personnel;

(N) Law enforcement personnel; or

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(O) Reproductive health care facility or pregnancy resource center personnel and volunteers.

(2) If a person is required to report child abuse pursuant to this subsection because such person attends to a child pursuant to such person's duties as an employee of or volunteer at a hospital, school, social agency, or similar facility, such person shall notify the person in charge of such hospital, school, agency, or facility, or the designated delegate thereof, and the person so notified shall report or cause a report to be made in accordance with this Code section. An employee or volunteer who makes a report to the person designated pursuant to this paragraph shall be deemed to have fully complied with this subsection. Under no circumstances shall any person in charge of such hospital, school, agency, or facility, or the designated delegate thereof, to whom such notification has been made exercise any control, restraint, or modification or make any other change to the information provided by the reporter, although each of the aforementioned persons may be consulted prior to the making of a report and may provide any additional, relevant, and necessary information when making the report.

(3) When a person identified in paragraph (1) of this subsection has reasonable cause to believe that child abuse has occurred involving a person who attends to a child pursuant to such person's duties as an employee of or volunteer at a hospital, school, social agency, or similar facility, the person who received such information shall notify the person in charge of such hospital, school, agency, or facility, or the designated delegate thereof, and the person so notified shall report or cause a report to be made in accordance with this Code section. An employee or volunteer who makes a report to the person designated pursuant to this paragraph shall be deemed to have fully complied with this subsection. Under no circumstances shall any person in charge of such hospital, school, agency, or facility, or the designated delegate thereof, to whom such notification has been made exercise any control, restraint, or modification or make any other change to the information provided by the reporter, although each of the aforementioned persons may be consulted prior to the making of a report and may provide any additional, relevant, and necessary information when making the report.

(d) Any other person, other than one specified in subsection (c) of this Code section, who has reasonable cause to believe that suspected child abuse has occurred may report or cause reports to be made as provided in this Code section.

(e) With respect to reporting required by subsection (c) of this Code section, an oral report by telephone or other oral communication or a written report by electronic submission or facsimile shall be made immediately, but in no case later than 24 hours from the time there is reasonable cause to believe that suspected child abuse has occurred. When a report is being made by electronic submission or facsimile to the Division of Family and Children Services of the Department of Human Services, it shall be done in the manner specified by the division. Oral

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reports shall be followed by a later report in writing, if requested, to a child welfare agency providing protective services, as designated by the Division of Family and Children Services of the Department of Human Services, or, in the absence of such agency, to an appropriate police authority or district attorney. If a report of child abuse is made to the child welfare agency or independently discovered by the agency, and the agency has reasonable cause to believe such report is true or the report contains any allegation or evidence of child abuse, then the agency shall immediately notify the appropriate police authority or district attorney. Such reports shall contain the names and addresses of the child and the child's parents or caretakers, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator. Photographs of the child's injuries to be used as documentation in support of allegations by hospital employees or volunteers, physicians, law enforcement personnel, school officials, or employees or volunteers of legally mandated public or private child protective agencies may be taken without the permission of the child's parent or guardian. Such photographs shall be made available as soon as possible to the chief welfare agency providing protective services and to the appropriate police authority.

(f) Any person or persons, partnership, firm, corporation, association, hospital, or other entity participating in the making of a report or causing a report to be made to a child welfare agency providing protective services or to an appropriate police authority pursuant to this Code section or any other law or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, provided that such participation pursuant to this Code section or any other law is made in good faith. Any person making a report, whether required by this Code section or not, shall be immune from liability as provided in this subsection.

(g) Suspected child abuse which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report child abuse reported solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about child abuse from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of child abuse from the confession of the perpetrator.

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(h) Any person or official required by subsection (c) of this Code section to report a suspected case of child abuse who knowingly and willfully fails to do so shall be guilty of a misdemeanor.

(i) A report of child abuse or information relating thereto and contained in such report, when provided to a law enforcement agency or district attorney pursuant to subsection (e) of this Code section or pursuant to Code Section 49-5-41, shall not be subject to public inspection under Article 4 of Chapter 18 of Title 50 even though such report or information is contained in or part of closed records compiled for law enforcement or prosecution purposes unless:

(1) There is a criminal or civil court proceeding which has been initiated based in whole or in part upon the facts regarding abuse which are alleged in the child abuse reports and the person or entity seeking to inspect such records provides clear and convincing evidence of such proceeding; or

(2) The superior court in the county in which is located the office of the law enforcement agency or district attorney which compiled the records containing such reports, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this paragraph. When those records are located in more than one county, the application may be made to the superior court of any one of such counties. A copy of any application authorized by this paragraph shall be served on the office of the law enforcement agency or district attorney which compiled the records containing such reports. In cases where the location of the records is unknown to the applicant, the application may be made to the Superior Court of Fulton County. The superior court to which an application is made shall not grant the application unless:

(A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

(B) The applicant carries the burden of showing the legitimacy of the research project; and

(C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information.

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See Chapter 3: Children in the Library, Child Abuse Reporting at § 3.01.

**Title 20. Education**  
**Chapter 2. Elementary and Secondary Education**  
**Article 6. Quality Basic Education**  
**Part 14. Other Educational Programs**  
**O.C.G.A. § 20-2-305. County and regional public libraries**

(a) The board of regents shall annually determine and request of the General Assembly the amount of funds needed for county and regional public libraries. This request shall include, but not be limited to, funds to provide library books and materials, salaries and travel for professional librarians, capital outlay for public library construction, and maintenance and operation. The amount for library books and materials shall be not less than 35¢ per person. Funds for the purpose of paying the salaries of librarians allotted shall be in accordance with regulations established by the state board and the state minimum salary schedule for certificated professional personnel. Public library funds shall be apportioned to county and regional public libraries in proportion to the area and population to be served by such libraries in accordance with regulations and minimum public library requirements prescribed by the state board. All such funds shall be distributed directly to the regional or county library boards.

(b) The board of regents shall make adequate provisions for staff, supplies, services, and facilities to operate and maintain special media equipment to meet the library needs of the blind and disabled citizens of this state.

(c) The board of regents shall provide the staff, materials, equipment, and supplies to provide a book-lending and information service to all county and regional public libraries in the state and to coordinate interlibrary cooperation and interchange of materials and information among all types of libraries.

(d) The board of regents is authorized as the sole agency to receive federal funds allotted to this state for public libraries.

(e) The board of regents shall adopt policies and regulations to implement this Code section.

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(f) As used in this Code section, the term "board of regents" means the Board of Regents of the University System of Georgia.

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### **Title 20. Education**

#### **Chapter 2. Elementary and Secondary Education**

##### **Article 6. Quality Basic Education**

##### **Part 15. Miscellaneous Provisions**

##### **O.C.G.A. § 20-2-320. Quality Basic Education Program; steering committee; state-wide comprehensive educational information system; release of information**

(a) There shall be a state-wide comprehensive educational information system which will provide for the accurate, seamless, and timely flow of information from local and regional education agencies, units of the University System of Georgia, and technical schools and colleges to the state. The system design shall include hardware, software, data, collection methods and times, training, maintenance, communications, security of data, and installation specifications and any other relevant specifications needed for the successful implementation of the system. The state-wide comprehensive educational information system shall not use a student's social security number or an employee's social security number in violation of state or federal law to identify a student or employee. Upon approval of the boards of the respective education agencies, such boards shall issue appropriate requests for proposals to implement a state-wide comprehensive educational information system, subject to appropriation by the General Assembly. The boards of the respective education agencies, at the direction of the Education Coordinating Council, shall initiate contracts with appropriate vendors and local units of administration for the procurement of services, purchase of hardware and software, and for any other purpose as directed by the Education Coordinating Council, consistent with appropriation by the General Assembly.

(b) The State Board of Education, the State Board of the Technical College System of Georgia, the Board of Regents of the University System of Georgia, and the Department of Early Care and Learning shall require an individual student record for each student enrolled which at a minimum includes the data specifications approved by the Education Coordinating Council. The Professional Standards Commission shall maintain an individual data record for each certificated person employed in a public school.

(c) For the purpose of this article, authorized educational agencies shall be the Department of Education; the Department of Early Care and Learning; the Board of Regents of the University

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System of Georgia; the Technical College System of Georgia; the Education Coordinating Council; the Professional Standards Commission; the Office of Student Achievement; the education policy and research components of the office of the Governor; the Office of Planning and Budget; the Senate Budget and Evaluation Office; and the House Budget and Research Office. Any information collected over the state-wide comprehensive educational information system, including individual student records and individual personnel records, shall be accessible by authorized educational agencies, provided that any information which is planned for collection over the system but which is temporarily being collected by other means shall also be accessible by authorized educational agencies and provided, further, that adequate security provisions are employed to protect the privacy of individuals. All data maintained for this system shall be used for educational purposes only. In no case shall information be released by an authorized educational agency which would violate the privacy rights of any individual student or employee. Information released by an authorized educational agency in violation of the privacy rights of any individual student or employee shall subject the authorized educational agency to all penalties under applicable state and federal law. Any information collected over the state-wide comprehensive educational information system which is not stored in an individual student or personnel record format shall be made available to the Governor and the House and Senate Appropriations Committees, the House Committee on Education, the Senate Education and Youth Committee, the House Committee on Higher Education, and the Senate Higher Education Committee, except information otherwise prohibited by statute. Data which are included in an individual student record or individual personnel record format shall be extracted from such records and made available in nonindividual record format for use by the Governor, committees of the General Assembly, and agencies other than authorized educational agencies.

(d) The Department of Education shall request sufficient funds annually for the operation, training of appropriate personnel, and maintenance and enhancements of the system.

(e) In a phased approach, the state-wide comprehensive educational information system shall be fully completed subject to appropriation by the General Assembly for this purpose. During the phased implementation of the system, highest priority shall be given to the electronic transmission of complete full-time equivalent counts, the uniform budgeting and accounting system, and complete salary data for each local school system. All pre- kindergarten programs, local units of administration for grades kindergarten through 12, technical schools and colleges, public libraries, public colleges and universities, and regional educational service agencies shall provide data as required by their respective boards and agencies. Notwithstanding any provision of this Code section to the contrary, no local school system shall earn funds under Code Section 20-2-186 for superintendents, assistant superintendents, or principals if the local unit of administration fails to comply with the provisions of this Code section.

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(f) Notwithstanding any other provision of law, the Department of Education is authorized to and shall obtain and provide to the Department of Driver Services, in a form to be agreed upon between the Department of Education and the Department of Driver Services, enrollment, expulsion, and suspension information regarding minors 15 through 17 years of age reported pursuant to Code Sections 20-2-690 and 20-2-697, to be used solely for the purposes set forth in subsection (a.1) of Code Section 40-5-22.

*Current through the 2017 Regular Session*

### **Title 20. Education**

#### **Chapter 3. Postsecondary Education**

#### **Article 2. Board of Regents and University System**

##### **Part 1. Board of Regents**

#### **O.C.G.A. § 20-3-39. Transfer of functions and personnel relating to public libraries from the Technical College System of Georgia to Board of Regents**

(a) Effective July 1, 2000, the board of regents shall carry out all the functions and exercise all of the powers formerly held by the Department of Technical and Adult Education, now known as the Technical College System of Georgia, for the operation and management of public library services and public libraries. Subject to subsection (b) of this Code section, all persons employed by and positions authorized for the Department of Technical and Adult Education, now known as the Technical College System of Georgia, to perform these functions on June 30, 2000, shall, on July 1, 2000, be transferred to the board of regents. All office equipment, furniture, and other assets in possession of the Department of Technical and Adult Education, now known as the Technical College System of Georgia, which are used or held exclusively or principally by personnel transferred under this subsection shall be transferred to the board of regents on July 1, 2000.

(b) All transfers of employees and assets provided for in subsection (a) of this Code section shall be subject to the approval of the board of regents, and such personnel or assets shall not be transferred if the board of regents determines that a specific employee or asset should remain with the transferring agency.

(c) Employees who are transferred to the board of regents pursuant to this Code section shall be subject to the employment practices and policies of the board on and after July 1, 2000, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and who are transferred to the board of regents shall retain all existing rights under such rules. Retirement

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rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2000, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2000. Accrued annual and sick leave possessed by said employees on June 30, 2000, shall be retained by said employees as employees of the board.

(d) Funding for functions and positions transferred to the board of regents under this Code section shall be transferred as provided in Code Section 45-12-90.

(e) The board of regents shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Technical and Adult Education, now known as the Technical College System of Georgia, where applicable, which are in effect on June 30, 2000, and which relate to the functions transferred to the board. Such rules, regulations, policies, and procedures shall remain in effect until amended, repealed, superseded, or nullified by the board of regents.

*Current through the 2017 Regular Session*

### **Title 20. Education**

#### **Chapter 5. Libraries**

##### **Article 1. State Public Library Activities**

##### **O.C.G.A. § 20-5-1. Policy as to library service stated**

It is declared to be the policy of the state, as a part of the provisions for public education, to promote the establishment of public library service throughout the state.

*Current through the 2017 Regular Session*

### **Title 20. Education**

#### **Chapter 5. Libraries**

##### **Article 1. State Public Library Activities**

##### **O.C.G.A. § 20-5-2. Powers and duties of board of regents; acceptance of gifts; State Library Commission abolished**

(a) The board of regents shall give aid, advice, and counsel to all libraries and to communities which may propose to establish libraries as to the best means of establishing and administering them, the selection of books, cataloging, and other details of library management and shall exercise supervision over all public libraries and endeavor to improve libraries already

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established. The board of regents may also conduct a book-lending and information service for the benefit of the citizens of the state, free of cost except postage. The board of regents is also authorized to purchase books, periodicals, and other instructional materials for such purposes. The board of regents may also employ necessary professional and clerical staff to carry on the work as stated in this Code section and may pay their necessary traveling expenses while engaged in such work.

(b) The board of regents shall have authority to accept gifts of books, money, or other property from any public or private source, including the federal government and shall have authority to perform any and all functions necessary to carry out the intention and purposes of this article.

(c) The State Library Commission is abolished, and the functions and services exercised and performed by it shall be exercised and performed by the board of regents.

(d) The collection of books, periodicals, documents, and other library materials held by the board of regents is designated as the State Library.

(e) Each department and institution within the executive branch of state government shall make a report to the director of the University of Georgia Libraries on or before December 1 of each year containing a list by title of all public documents published or issued by such department or institution during the preceding state fiscal year. The report shall also contain a statement noting the frequency of publication of each such public document. The director of the University of Georgia Libraries may disseminate copies of the lists, or such parts thereof, in such form as the director of University of Georgia Libraries, in his or her discretion, deems shall best serve the public interest. For purposes of this article, "public documents" shall mean the books, magazines, journals, pamphlets, reports, bulletins, and other publications of any agency, department, board, bureau, commission, or other institution of the executive branch of state government but specifically shall not include the reports of the Supreme Court and the Court of Appeals, the journals of the House and the Senate, or the session laws enacted by the General Assembly and shall not include forms published by any agency, department, board, bureau, commission, or other institution of the executive branch of state government.

(f) Each department and institution within the executive branch of state government shall submit to the director of the University of Georgia Libraries at least five copies of each of the public documents which such departments and institutions publish, within one month of its date of publication, unless the director of the University of Georgia Libraries requests additional copies of any such public documents, up to a maximum of 60 copies, in which case the number of copies requested shall be submitted.

(g) The Governor and all of the officers who are or may be required to make reports to the General Assembly shall furnish the director of the University of Georgia Libraries with at least five copies of each of such reports and additional copies upon request of the director of the University of Georgia Libraries.

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(h) The Department of Administrative Services, the Georgia Correctional Industries Administration, the Board of Regents of the University System of Georgia, and any other agency of state government which prints public documents shall furnish to the director of the University of Georgia Libraries on a monthly basis a record of all public documents which have been printed or scheduled for printing by that agency during the preceding month.

(i) The director of the University of Georgia Libraries shall have the authority to supply copies of public documents to any state institution, public library, or public school in this state or to any other institution of learning which maintains a library, if such copies are available. Such copies may be furnished for a reasonable cost or free of charge or for the cost of postage or shipping, as the director of the University of Georgia Libraries deems appropriate.

(j) The director of the University of Georgia Libraries shall have the authority to act as the exchange agent of this state for the purpose of a regular exchange between this state and other states of public documents. The several state departments and institutions are required to deposit with the director of the University of Georgia Libraries for that purpose up to 50 copies of each of their public documents, as may be specified by the director of the University of Georgia Libraries.

(k) The director of the University of Georgia Libraries may transfer books and other library holdings to the Division of Archives and History, the Board of Regents of the University System of Georgia, or other public libraries. Books and other library holdings which are obsolete, defective, worn out, or surplus, or otherwise in the discretion of the director of the University of Georgia Libraries are not required, may be sold, destroyed, or otherwise disposed of by the director of the University of Georgia Libraries, without the need to comply with the provisions of Article 5 of Chapter 13 of Title 45 relating to the disposition of surplus state books.

(l) The director of the University of Georgia Libraries shall have the authority to employ the necessary personnel, including documents librarians and other professional personnel, to carry out the powers and duties set forth in this Code section.

(m) Any person or agency required by the provisions of this Code section to submit to the director of the University of Georgia Libraries copies of documents shall also submit such documents in such electronic form as the director shall specify, if such electronic form is readily available.

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## Appendix B: Georgia's Library Laws

### **Title 20. Education**

#### **Chapter 5. Libraries**

##### **Article 1. State Public Library Activities**

##### **O.C.G.A. § 20-5-3. Funds for public library services**

In order to effectuate the purposes of this article there shall be made available to the board of regents whatever funds may be duly allocated to it by the proper authority, either by specific appropriation or otherwise as now provided by law, and the board of regents shall be authorized to disburse such funds to public libraries serving persons of all ages through legally constituted municipal library boards or to the other legally constituted local library boards as may now or hereafter be established by law. The board of regents shall use such funds for the purpose of aiding and supplementing the establishment and development of public library services.

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For Information on State Grants and Accounting, go to [http://www.georgialibraries.org/lib/stategrants\\_accounting/](http://www.georgialibraries.org/lib/stategrants_accounting/) (accessed April 4, 2018).

### **Title 20. Education**

#### **Chapter 5. Libraries**

##### **Article 1. State Public Library Activities**

##### **O.C.G.A. § 20-5-4. Reports of libraries**

All public libraries in the state shall submit reports annually to the board of regents.

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For Information on Annual Reports, go to <http://www.georgialibraries.org/lib/statistics/> (Accessed April 4, 2018).

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## Appendix B: Georgia's Library Laws

### **Title 20. Education**

#### **Chapter 5. Libraries**

##### **Article 1. State Public Library Activities**

##### **O.C.G.A. § 20-5-5. Acceptable-use policy for Internet usage at public libraries**

(a) As used in this Code section, the term:

(1) "Acceptable-use policy" means a policy for Internet usage adopted by the governing board of a public library that meets the requirements of this Code section.

(2) "Child pornography" means any computer depiction or other material depicting a child under the age of 18 years engaging in sexually explicit conduct or in the simulation of such conduct.

(3) "Harmful to minors" has the meaning given to such term in Code Section 16-12-100.1.

(4) "Internet" means a global network that connects computers via telephone lines, fiber networks, or both to electronic information.

(5) "Obscene" has the meaning given to such term in Code Section 16-12-80.

(6) "Sexually explicit conduct" has the meaning given to such term in Code Section 16-12-100.

(b) No later than January 1, 2007, the governing body of each public library shall adopt an acceptable-use policy for its public library system. At a minimum, an acceptable-use policy shall contain provisions which are reasonably designed to:

(1) Prevent library patrons, including those patrons under 18 years of age, and library employees from using any computer equipment and communication services owned or leased by the public library for sending, receiving, viewing, or downloading visual depictions of obscenity, child pornography, or material that is harmful to minors; and

(2) Establish appropriate measures to be taken against library patrons and employees who willfully violate the acceptable-use policy.

(c) A public library shall take such steps as it deems appropriate to implement and enforce the acceptable-use policy, which shall include, but not be limited to:

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(1) Use of software programs reasonably designed to block access to visual depictions of obscenity, child pornography, and material that is harmful to minors; or

(2) Selection of online servers that block access to visual depictions of obscenity, child pornography, and material that is harmful to minors.

(d) A public library shall not be subject to civil liability for damages to any person as a result of the failure of any approved software program or approved online server to block access to visual depictions of obscenity, child pornography, and material that is harmful to minors. Nothing in this Code section shall be deemed to abrogate or lessen any immunity or other protection against liability accorded to public libraries under an existing law or court decision.

(e) The Attorney General and the board of regents shall consult with and assist any public library in the development and implementation of an acceptable-use policy pursuant to this Code section.

(f)(1) No later than January 31, 2007, each public library shall submit a copy of the acceptable-use policy adopted pursuant to subsection (b) of this Code section to the board of regents. Such submission shall also include the identification of any software program or online server that is being utilized to block access to material in accordance with subsection (c) of this Code section.

(2) The board of regents shall review each acceptable-use policy and any subsequent revisions submitted pursuant to paragraph (3) of this subsection. If the board of regents determines after review that a policy or revision is not reasonably designed to achieve the requirements of this Code section, the board of regents shall provide written notice to the public library explaining the nature of such noncompliance and the public library shall have 30 days from the receipt of written notice to correct such noncompliance. The board of regents may provide an extension to the 30 day period on a showing of good cause.

(3) No revision of an acceptable-use policy which has been approved by the board of regents pursuant to paragraph (2) of this subsection shall be implemented until such revision is approved by the board of regents. If the board of regents fails to disapprove the revision within 60 days after the submission is received, the public library may proceed with the implementation of the revision.

(4) The board of regents shall be authorized to withhold a portion of state funding to a public library if the public library:

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(A) Fails to timely submit an acceptable-use policy in accordance with paragraph (1) of this subsection;

(B) Submits an acceptable-use policy that is not reasonably designed to achieve the requirements of this Code section; or

(C) Is not enforcing or is substantially disregarding its acceptable-use policy.

(5) If the board of regents disapproves an acceptable-use policy of a public library or any revision thereof or notifies the public library that it is subject to the withholding of funding pursuant to paragraph (4) of this subsection, the public library may appeal the decision to the superior court of the county where the public library is situated.

(g)(1) The board of regents shall be responsible for conducting investigations and making written determinations as to whether a public library has violated the requirements of this Code section.

(2) If the board of regents determines that a public library is in violation of the requirements of this Code section, it shall direct the public library to acknowledge and correct the violation within 30 days and to develop a corrective plan for preventing future recurrences.

(h)(1) Notwithstanding any other provision of this Code section to the contrary, an administrator or supervisor of a public library, or designee thereof, may disable the software program or online server that is being utilized to block access to material for an adult or for a minor who provides written consent from his or her parent or guardian to enable access to the Internet for bona fide research or other lawful purpose.

(2) Nothing in paragraph (1) of this subsection shall be construed to permit any person to have access to material the character of which is illegal under federal or state law.

(i) A public library which is fulfilling the requirements of the federal Children's Internet Protection Act, P.L. 106-554, is not required to comply with this Code section.

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American Library Association. Libraries and the internet toolkit  
(accessed April 4, 2018 at

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Georgia Libraries Tech Center. Acceptable Use Policy 9-28-11 (Accessed April 4, 2018 at <http://galibtech.org/?p=347>).

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### **Title 20. Education**

#### **Chapter 5. Libraries**

#### **Article 2. Local and Regional Public Libraries**

#### **Part 1. City Public Libraries**

#### **O.C.G.A. § 20-5-20. Maintenance of libraries**

Any city, through its properly constituted municipal authorities, may raise by taxation from year to year and permanently appropriate money for the purpose of establishing, erecting, maintaining, or assisting in maintaining a public library. Any such sum or sums of money so appropriated shall be expended by and under the direction of a board of trustees of such public library elected by the city council of such city.

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#### **Article 2. Local and Regional Public Libraries**

##### **Part 1. City Public Libraries**

##### **O.C.G.A. § 20-5-21. Disbursement of appropriations**

In any city in which an appropriation shall be made under this part, the money so appropriated shall be drawn from the treasury of such city on the warrant of the board of trustees of the public library and shall be paid out from time to time for salaries, purchase of books, and other necessary expenses of the library; and an itemized statement of the amounts so paid out shall be made annually to the mayor of such city and by him submitted to the properly constituted authorities of such city.

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### **Title 20. Education**

#### **Chapter 5. Libraries**

#### **Article 2. Local and Regional Public Libraries**

##### **Part 1. City Public Libraries**

##### **O.C.G.A. § 20-5-22. Donations**

The board of trustees of the public library of a city is authorized to accept and receive donations, either in money, land, or other property, for the purpose of erecting or assisting in the erection of suitable buildings for the use of such public library, for maintaining it, or for assisting in maintaining it.

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##### **O.C.G.A. § 20-5-23. Duties of board of trustees**

The board of trustees of the public library of a city shall exercise a strict and rigid supervision over such public library; shall pass all necessary rules and regulations for the government and control of it; and shall elect a librarian and, if necessary, an assistant librarian or designate some officer or officers to perform the duties of librarian or assistant librarian and appoint and discharge such officer or officers at pleasure.

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**O.C.G.A. § 20-5-24. Powers of the city**

The municipal government of any city in which an appropriation shall be made under this part shall have authority to enter into a legal and binding agreement to accept and receive any donation offered by any person or persons, and any such agreement shall be legal and binding upon the municipal government and its successors. Any agreements by the municipal government of a city to pay any sum or sums of money annually for the use of the public library shall be legal and binding on the city. Any ordinance or ordinances carrying such agreement into effect shall have the force and effect of law and be binding on the city during the time mentioned in the agreement and the ordinance.

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**O.C.G.A. § 20-5-40. Establishment**

(a) The governing authority of any county or municipality may establish a public library system. Any public library established pursuant to this part shall be a tax-exempt institution.

(b) A public library may be established in the following manner:

(1) By resolution or act, at the discretion of the governing authority, of any county or municipality, or any combination thereof;

(2) By approval of the voters of any county or municipality in a referendum election on the question of the establishment of a public library as provided in this paragraph. Upon a written petition containing 35 percent of the registered and qualified voters of a municipality or county being filed with the appropriate governing authority, the governing authority shall be required to hold and conduct a special referendum election for the purpose of submitting to the qualified

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voters of the municipality or county the question of whether or not a public library, as provided for in this part, shall be authorized. In the event a majority of the persons voting in the election vote in favor of the public library, then the governing authority of the municipality or county shall establish a public library as provided in this part. Otherwise, the governing authority shall have no authority to do so. Following the expiration of two years after any election is held which results in disapproval of a public library, as provided in this part, another election on this question shall be held if another petition, as provided in this paragraph, is filed with the appropriate governing authority; or

(3) By contractual agreement between the governing authorities of any county or municipality.

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#### **O.C.G.A. § 20-5-41. Board of trustees**

Each library system shall be governed by a board of trustees. Each system shall have a governing board of trustees but may have other affiliated boards of trustees for member libraries. The county board of library trustees shall exercise authority in a county system. The regional board of library trustees shall exercise authority in a multicounty system.

*Current through the 2017 Regular Session*

Georgia Public Library Service. (2016) *The Georgia public library trustee handbook*. (accessed April 4, 2018 at <http://www.georgialibraries.org/trustees/>)

Minor, M. A., & Georgia Public Library Service. (2012). *Constitutions and bylaws for Georgia public libraries: A handbook for system directors and library administrators*, pp. 5-8 (accessed April 4, 2018 at [http://www.georgialibraries.org/lib/publiclibinfo/Constitutions\\_Bylaws-ga-pub-libs-02-2012.pdf](http://www.georgialibraries.org/lib/publiclibinfo/Constitutions_Bylaws-ga-pub-libs-02-2012.pdf)). Print copies are also available through PINES (call number 027.4758 M6662)).

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#### **O.C.G.A. § 20-5-42. Membership, terms, removal and vacancies in board of trustees**

(a) A county board of trustees shall consist of at least one appointee from each governmental agency financially supporting the library on a regular basis. Appointments shall be made in writing pursuant to the constitution and bylaws of the library system, shall be transmitted to the appointee and to the library, and shall state the length of term and expiration date of the appointment.

(b) A regional board of library trustees shall consist of trustees serving on member county boards who are appointed to the regional board by each county board for a term specified in writing pursuant to the constitution and bylaws of the library system.

(c) Board members shall serve staggered terms for continuity of service.

(d) Board members shall be removed for cause or for failure to attend three consecutive meetings pursuant to the library system's constitution and bylaws or the local constitution and bylaws.

(e) Vacancies shall be filled in the same manner as appointments are made. If a vacancy occurs prior to the expiration of a trustee's term, the new appointee shall complete the unexpired term.

(f) Members of the governing authority of any county, municipality, or governmental agency financially supporting the library shall be eligible for appointment and service as members or as ex officio members of the board of trustees of any library or library system. No such governing authority shall appoint a majority of its members to the board of trustees of any library or library system nor shall a majority of the board of trustees of any library or library system consist of members of the governing authority of any single county, municipality, or governmental agency.

(g) Public library system boards of trustees may provide for ex officio board membership in the system constitution and bylaws.

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Minor, M. A., & Georgia Public Library Service. (2012). *Constitutions and bylaws for Georgia public libraries: A handbook for system directors and library administrators*, pp. 5-8 (accessed April 4, 2018 at [http://www.georgialibraries.org/lib/publiclibinfo/Constitutions\\_Bylaws-ga-pub-libs-02-2012.pdf](http://www.georgialibraries.org/lib/publiclibinfo/Constitutions_Bylaws-ga-pub-libs-02-2012.pdf)). Hard copies are also available through PINES (call number 027.4758 M6662)).

Georgia Public Library Service. (2016) *The Georgia public library trustee handbook*. (accessed April 4, 2018 at <http://www.georgialibraries.org/trustees/>).

Chief Officers of State Library Agencies. (2016) Public library trustee manual: A template (accessed April 4, 2018 at [http://www.cosla.org/documents/Public\\_Library\\_Trustee\\_Manual\\_A\\_Template.PDF](http://www.cosla.org/documents/Public_Library_Trustee_Manual_A_Template.PDF)).

1988 Ga. Op. Atty. Gen. 93 (Jan. 26, 1988) (all members of the county board of library trustees are to be appointed by governmental agencies supporting the library system.)

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##### **O.C.G.A. § 20-5-43. Duties and responsibilities of board of trustees**

The board of trustees shall have duties and responsibilities which include but are not limited to the following:

(1) To employ a library director who meets state certification requirements and such other employees as necessary upon the recommendation of the library system director; provided, however, that the board shall be authorized to delegate employment of staff members to the library system director;

(2) To approve budgets prepared by the library system director and assume responsibility for the presentation of the library's fiscal needs to the supporting agencies;

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- (3) To attend board meetings;
- (4) To establish policies governing library programs, including rules and regulations governing the use of the library;
- (5) To set policy for the administration of gifts of money and property;
- (6) To present financial and progress reports to governing officials and to the public;
- (7) To notify the appropriate authorities of a vacancy on the board so that a person may be appointed to complete unexpired or full terms; and
- (8) To notify the library system director, in advance, of all meetings of library boards and board committees.

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See Chapter 4: Trustees & Friends, Statutory Duties at § 4.01 [a].

Georgia Public Library Service. (2016) *The Georgia public library trustee handbook* (accessed April 4, 2018 at <http://www.georgialibraries.org/trustees/>)

Minor, M. A., & Georgia Public Library Service. (2012). *Constitutions and bylaws for Georgia public libraries: A handbook for system directors and library administrators*, pp. 5-8, 16-17 (accessed April 4, 2018 at [http://www.georgialibraries.org/lib/publiclibinfo/Constitutions\\_Bylaws-ga-pub-libs-02-2012.pdf](http://www.georgialibraries.org/lib/publiclibinfo/Constitutions_Bylaws-ga-pub-libs-02-2012.pdf). Hard copies are also available through PINES (call number 027.4758 M6662)).

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#### **O.C.G.A. § 20-5-44. Compensation of board of trustees**

Members of the board of trustees shall receive no compensation; provided, however, that such members may be reimbursed for any reasonable and necessary expenses incurred in the performance of library business or if stipulated in terms of any bequest or gift. Dues or fees for membership in local, state, regional, and national library associations may be paid from operating funds in accordance with the constitution and bylaws of the library system.

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Georgia Public Library Service. (2016) *The Georgia public library trustee handbook* (accessed April 4, 2018 at <http://www.georgialibraries.org/trustees/>).

Minor, M. A., & Georgia Public Library Service. (2012). *Constitutions and bylaws for Georgia public libraries: A handbook for system directors and library administrators*, pp. 7-8 (accessed April 4, 2018 at [http://www.georgialibraries.org/lib/publiclibinfo/Constitutions\\_Bylaws-ga-pub-libs-02-2012.pdf](http://www.georgialibraries.org/lib/publiclibinfo/Constitutions_Bylaws-ga-pub-libs-02-2012.pdf). Hard copies are also available through PINES (call number 027.4758 M6662)).

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#### **O.C.G.A. § 20-5-45. Directors; qualifications, duties and responsibilities**

Every public library system shall have a director. Any person appointed as director of a public library system must hold at least a Grade 5(b) Librarian's Professional Graduate Certificate, as defined by the State Board for the Certification of Librarians; provided, however, that any person who was serving as acting director of a public library system as of July 1, 1984, shall be authorized to continue to serve as director. The director shall be appointed by the board of trustees and shall be the administrative head of the library system under the direction and

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review of the board. The director of a library system shall have duties and responsibilities which include but are not limited to the following:

(1) To recommend for employment or termination other staff members, as necessary, in compliance with applicable laws and the availability of funds and to employ or terminate other staff members if so authorized by the library board;

(2) To attend all meetings called by the Office of Public Library Services of the Board of Regents of the University System of Georgia or send a substitute authorized by the office director;

(3) To prepare any local, state, or federal annual budgets;

(4) To notify the board of trustees and the Office of Public Library Services of the Board of Regents of the University System of Georgia of any failure to comply with:

(A) Policies of the board;

(B) Criteria for state aid;

(C) State and federal rules and regulations; and

(D) All applicable local, state, or federal laws;

(5) To administer the total library program, including all affiliated libraries, in accordance with policies adopted by the system board of trustees; and

(6) To attend all meetings of the system board of trustees and affiliated boards of trustees or to designate a person to attend in his or her place.

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**O.C.G.A. § 20-5-46. Reports**

The library system shall make such reports as deemed necessary by local and state funding agencies. In every case at least an annual report of activities, income, and expenditures shall be filed with each funding agency.

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**O.C.G.A. § 20-5-47. Constitutions and bylaws for library boards**

(a) The board of trustees of each county and regional library shall have a written constitution and bylaws stating policy which shall be approved by the board. Such constitution and bylaws shall be drafted in accordance with the current edition of the Handbook on Constitutions, By-laws and Contracts for Georgia Public Libraries.

(b) Policies stated in the constitution of the county board may not be in conflict with the policies of the constitution of the regional board and state and federal laws and regulations. The constitution of the regional board shall not be in conflict with state and federal laws and regulations.

(c) All current constitutions and bylaws must be on file in the Office of Public Library Services of the Board of Regents of the University System of Georgia, and all amendments must be filed with the office immediately upon adoption.

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Minor, M. A., & Georgia Public Library Service. (2012). *Constitutions and bylaws for Georgia public libraries: A handbook for system directors and library administrators* (accessed April 4, 2018 at [http://www.georgialibraries.org/lib/publiclibinfo/Constitutions\\_Bylaws-](http://www.georgialibraries.org/lib/publiclibinfo/Constitutions_Bylaws-)

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[ga-pub-libs-02-2012.pdf](#). Hard copies are also available through PINES (call number 027.4758 M6662).

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##### **O.C.G.A. § 20-5-48. Ownership of property used for library purposes**

(a) A clear title in fee simple to an approved site on which a library facility is to be located shall be held by either the library board of trustees or the county or municipality. Title to property used for library purposes shall be vested in the library board of trustees or in that local agency which makes the major financial contribution toward construction costs. Notwithstanding any provision in this part to the contrary, any facility, the title to which currently is held by a nonprofit organization and which is now being operated by a public library board of trustees, may continue to be operated by that library board of trustees if the operation of that facility by the board of trustees meets the standards of the Office of Public Library Services of the Board of Regents of the University System of Georgia; and the title to that facility may remain in the hands of that nonprofit organization. When the composition of a library system is changed or when the library system is dissolved and the title is vested in the library board of trustees, the Office of Public Library Services of the Board of Regents of the University System of Georgia shall serve as mediator in determining ownership of property.

(b) Other property including, but not limited to, equipment and materials that were purchased with state, federal, or contract funds coming through the system budget shall be owned by the system board of trustees and shall be placed or transferred where it is most useful. Upon dissolution or significant structural change within the system, such property shall be divided on a pro rata basis according to the proportion of financial costs of property borne by the involved parties. The library system board of trustees shall furnish the financial and statistical information considered by the parties attempting to reach agreement. If the parties are unable to reach a mutually agreeable solution, the final decision of property ownership shall be made by the Office of Public Library Services of the Board of Regents of the University System of Georgia or its designee.

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#### **O.C.G.A. § 20-5-49. Contracts and agreements of library board**

Library systems are authorized to make and enter into such contracts or agreements as are deemed necessary and desirable. All such contracts or agreements entered into shall:

- (1) Detail the specific nature of the services, programs, facilities, arrangements, or properties to which such contracts or agreements are applicable;
- (2) Provide for the allocation of costs and other financial responsibilities;
- (3) Specify the respective rights, duties, obligations, and liabilities of the parties; and
- (4) Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriated to the proper effectuation and performance of the agreement.

No public or private library agency shall enter into any agreement itself, or jointly with any other library agency, to exercise any power or engage in any action prohibited by the Constitution or laws of this state.

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#### **O.C.G.A. § 20-5-50. Bonding of library boards**

Each library board which handles finances must keep a current bond for an adequate amount determined by the board of trustees and recorded in the minutes on the library director, the treasurer of the board of trustees, or other officials and employees authorized to handle funds. Proof of the bond for each board must be filed with the Renewal Application for State Aid.

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#### **O.C.G.A. § 20-5-51. Dissolution of library systems**

(a) A library system shall be dissolved by a reversal of procedures followed in its original organization. A majority of the board members in a majority of the counties must agree to the dissolution of the system. One county in a multicounty system may withdraw by a reversal of the procedure by which the county became a member.

(b) If the local constitution and bylaws or participating agreement does not specify a notification period for withdrawal, the proper notice shall be sent six months prior to the end of the state fiscal year. This notice must include reasons for the withdrawal and the method by which the decision was reached and must be sent to the chairman of the system board of trustees and the system library director. The Board of Regents of the University System of Georgia must be notified of the receipt of this letter of intent within five working days.

(c) Upon dissolution or withdrawal, no further state or federal grant funds shall be paid for or to the dissolving or withdrawing unit or units until such time as the unit or units reestablish the library or libraries pursuant to this part and meet eligibility requirements for such grant funds.

(d) A multicounty regional system may elect to expel a member county upon the following conditions:

(1) Failure of the county to maintain the agreed level of support to the regional system as in the most recent system-participating agreement; or

(2) Failure of the county to meet criteria which may jeopardize the system's eligibility for state or federal funds.

(e) If the system's constitution and bylaws or participating agreement fails to describe a notice period for expulsion, the proper notice shall be sent not less than six months prior to the end of the state fiscal year. This notice must be sent to the chairperson of the county board of trustees, all funding agencies party to the participating agreement, the system library director, and the Office of Public Library Services of the Board of Regents of the University System of Georgia.

(f) Upon total dissolution of a library system, all property shall be disposed of as provided in this part.

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##### **O.C.G.A. § 20-5-52. Unlawful taking or destruction of materials**

Any person who shall steal or unlawfully take or willfully or maliciously write upon, cut, tear, deface, disfigure, soil, obliterate, break, or destroy or who shall sell or buy or receive, knowing it to have been stolen, any book, pamphlet, document, newspaper, periodical, map, chart, picture, portrait, engraving, statue, coin, medal, equipment, specimen, recording, video product, microform, computer software, film, or other work of literature or object of art or the equipment necessary to its display or use belonging to or in the care of a public library shall be guilty of a misdemeanor.

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##### **O.C.G.A. § 20-5-53. Failure to return materials**

Any person who borrows from any public library any book, newspaper, magazine, manuscript, pamphlet, publication, recording, video product, microform, computer software, film, or other article or equipment necessary to its display or use belonging to or in the care of such public library under any agreement to return it and thereafter fails to return such book, newspaper, magazine, manuscript, pamphlet, publication, recording, video product, microform, computer software, film, or other article or equipment necessary to its display or use shall be given written notice, mailed to his last known address or delivered in person, to return such article or equipment within 15 days after the date of such notification. Such notice shall contain a copy of this Code section. If such person shall thereafter willfully and knowingly fail to return such article or equipment within 15 days, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$500.00 or imprisonment for not more than 30 days and shall be required to return such article or equipment or provide reimbursement for the replacement cost of such article or equipment.

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##### **O.C.G.A. § 20-5-54. Concealing or removing books or other property**

Any person who, without authority and with the intention of depriving the public library of the ownership of such property, willfully conceals a book or other public library property, while still on the premises of such public library, or willfully or without authority removes any book or other property from any public library shall be guilty of a misdemeanor; provided, however, that, if the replacement cost of the public library property is less than \$25.00, the punishment shall be a fine of not more than \$250.00. Proof of the willful concealment of any book or other public library property while still on the premises of such public library shall be prima-facie evidence of intent to violate this Code section.

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##### **O.C.G.A. § 20-5-55. Civil liability of agents and employees**

An agent or employee of a public library or of any department or office of the state or local government causing the arrest of any person pursuant to the provisions of this part shall not be held civilly liable for unlawful detention, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested unless excessive or unreasonable force is used, whether such arrest takes place on the premises by such agent or employee; provided, however, that, in causing the arrest of such person, the public library or agent or employee of the public library had at the time of such arrest probable cause to believe that the person committed willful theft or concealment of books or other library property.

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**O.C.G.A. § 20-5-56. Certification of librarians**

All persons holding professional positions with the title of librarian must be certified by the State Board for the Certification of Librarians.

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For information on the Board and online application materials, go to <http://sos.ga.gov/index.php/licensing/plb/30> (accessed April 4, 2018).

1995 Ga. Op. Atty. Gen 189 (Oct. 13, 1995) (it is reasonable for state law to require public librarians to be graduates of an ALA accredited school.)

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**O.C.G.A. § 20-5-57. Forfeiture of state and federal aid**

Any failure to comply with the provisions of this part shall result in the forfeiture of all state and federal library aid to the system.

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Policies for Public Library State Grants Program. (2015) (Accessed April 4, 2018 at [http://www.georgialibraries.org/lib/stategrants\\_accounting/](http://www.georgialibraries.org/lib/stategrants_accounting/))

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**O.C.G.A. § 20-5-58. Existing library systems**

A library system existing prior to July 1, 1984, shall have until July 1, 1989, to comply fully with the provisions of this part, and any provision to the contrary within Chapter 24 of Title 43, relating to libraries, shall be superseded by the provisions of this part.

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**O.C.G.A. § 20-5-59. Applicability**

This part shall not apply to any municipal public library.

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**O.C.G.A. § 20-5-60. "State library agency" defined**

As used in the Interstate Library Compact, "state library agency," with reference to this state, means the Office of Public Library Services of the Board of Regents of the University System of Georgia.

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The Interstate Library Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

--"INTERSTATE LIBRARY COMPACT--

--Article I. Policy and Purpose.--

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis, and to authorize cooperation and sharing among localities, states and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

--Article II. Definitions.--

As used in this compact:

(a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

--Article III. Interstate Library Districts.--

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## Appendix B: Georgia's Library Laws

(a) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing of books and other publications, and other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.
2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.
3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.
4. Employ professional, technical, clerical and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.
5. Sue and be sued in any court of competent jurisdiction.

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6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

7. Construct, maintain and operate a library, including any appropriate branches thereof.

8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

### --Article IV. Interstate Library Districts, Governing Board.--

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provisions therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

### --Article V. State Library Agency Cooperation.--

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

### --Article VI. Library Agreements.--

(a) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

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1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.
  2. Provide for the allocation of costs and other financial responsibilities.
  3. Specify the respective rights, duties, obligations and liabilities of the parties.
  4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.
- (b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.
- (c) No library agreement shall become effective until filed with the compact administrator of each state involved and approved in accordance with Article VII of this compact.

### --Article VII. Approval of Library Agreements.--

- (a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.
- (b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this Article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

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## Appendix B: Georgia's Library Laws

### --Article VIII. Other Laws Applicable.--

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

### --Article IX. Appropriations and Aid.--

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

### --Article X. Compact Administrator.--

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

### --Article XI. Entry into Force and Withdrawal.--

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the

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## Appendix B: Georgia's Library Laws

repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

### --Article XII. Construction and Severability.--

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

*Current through the 2017 Regular Session*

#### **Title 20. Education**

#### **Chapter 5. Libraries**

#### **Article 3. Interstate Library Compact**

#### **O.C.G.A. § 20-5-62. Limitations**

No municipality, county, or other political subdivision of this state shall be a party to a library agreement which provides for the construction or maintenance of a library pursuant to Article III, subdivision (c), paragraph (7) of the compact, or pledge its credit in support of such a library, or contribute to the capital financing thereof, except after compliance with any laws applicable to such municipalities, counties, or political subdivisions relating to or governing capital outlay and the pledging of credit.

*Current through the 2017 Regular Session*

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## Appendix B: Georgia's Library Laws

### **Title 20. Education**

#### **Chapter 5. Libraries**

##### **Article 3. Interstate Library Compact**

###### **O.C.G.A. § 20-5-63. Interstate library districts lying partly within this State**

An interstate library district lying partly within this state may claim and be entitled to receive state aid in support of any of its functions to the same extent and in the same manner as such functions are eligible for support when carried on by entities wholly within this state. For the purposes of computing and apportioning state aid to an interstate library district, this state will consider that portion of the area which lies within this state as an independent entity for the performance of the aided function or functions and compute and apportion the aid accordingly. Subject to any applicable laws of this state, such a district also may apply for and be entitled to receive any federal aid for which it may be eligible.

*Current through the 2017 Regular Session*

### **Title 20. Education**

#### **Chapter 5. Libraries**

##### **Article 3. Interstate Library Compact**

###### **O.C.G.A. § 20-5-64. Appointment of compact administrator**

The board of regents shall appoint an officer of this state to be the compact administrator pursuant to Article X of the compact. The board of regents shall also appoint one or more deputy compact administrators pursuant to such article.

*Current through the 2017 Regular Session*

### **Title 20. Education**

#### **Chapter 5. Libraries**

##### **Article 3. Interstate Library Compact**

###### **O.C.G.A. § 20-5-65. Withdrawal from the compact**

In the event of withdrawal from the compact, the board of regents shall send and receive any notices required by Article XI(b) of the compact.

*Current through the 2017 Regular Session*

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### Title 24. Evidence

#### Chapter 12. Medical Information

#### Article 4. Library and Veterinary Records

#### O.C.G.A. § 24-12-30. Confidential nature of library records

(a) Circulation and similar records of a library which identify the user of library materials shall not be public records but shall be confidential and shall not be disclosed except:

(1) To members of the library staff in the ordinary course of business;

(2) Upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward; or

(3) Upon appropriate court order or subpoena.

(b) Any disclosure authorized by subsection (a) of this Code section or any unauthorized disclosure of materials made confidential by subsection (a) of this Code section shall not in any way destroy the confidential nature of that material, except for the purpose for which an authorized disclosure is made. A person disclosing material as authorized by subsection (a) of this Code section shall not be liable therefor.

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This statute supersedes the former confidentiality statute (O.C.G.A. § 24-9-46). The text has not changed, it is merely a relocation of the statute within the code.

See Chapter 2: Patrons, Circulation Records at § 2.02 [a].

American Library Association, *Questions and Answers on Privacy and Confidentiality*

<http://www.ala.org/Template.cfm?Section=interpretations&Template=/ContentManagement/ContentDisplay.cfm&ContentID=15347> (accessed April 4, 2018).

Minor, M.A. & Georgia Public Library Service (2016). *Library Confidential: Understanding the Scope and Reasons for Patron Privacy*. Presented April 12, 2016. Available from Georgia Learning Center:

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<http://learning.georgialibraries.org/?s=marti&search-type=default>  
(accessed April 4, 2018).

**Title 36. Local Government**  
**Provisions Applicable to Municipal Corporations Only**  
**Chapter 34. Powers of Municipal Corporations Generally**  
**O.C.G.A. § 36-34-5.1. Municipal corporations authorized to enter into leases for purpose of**  
**providing library service**

Notwithstanding any provision of law to the contrary, each municipal corporation of this state is authorized, in the discretion of its governing authority, to enter into valid and binding lease agreements with nonprofit corporations, classified as public foundations (not private foundations) under the United States Internal Revenue Code, for the stated purpose of providing library services for any period of time not to exceed 15 years.

*Current through the 2017 Regular Session*

**Title 36. Local Government**  
**Provisions Applicable to Counties and Municipal Corporations**  
**Chapter 70. Coordinated and Comprehensive Planning and Service Delivery by Counties and**  
**Municipalities**  
**Article 1. Planning**  
**O.C.G.A. § 36-70-2. Definitions**

As used in this chapter, the term:

(1) "Comprehensive plan" means any plan by a county or municipality covering such county or municipality proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans established by the department.

(2) "Coordinated and comprehensive planning" means planning by counties and municipalities undertaken in accordance with the minimum standards and procedures for preparation of plans, for implementation of plans, and for participation in the coordinated and comprehensive planning process, as established by the department.

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(3) "County" means any county of this state.

(4) "Department" means the Department of Community Affairs of the State of Georgia created pursuant to Article 1 of Chapter 8 of Title 50.

(5) "Governing authority" or "governing body" means the board of commissioners of a county, sole commissioner of a county, council, commissioners, or other governing authority for a county or municipality.

(5.1) "Inactive municipality" means any municipality which has not for a period of three consecutive calendar years carried out any of the following activities:

(A) The levying or collecting of any taxes or fees;

(B) The provision of any of the following governmental services: water; sewage; garbage collection; police protection; fire protection; or library; or

(C) The holding of a municipal election.

(5.2) "Local government" means any county as defined in paragraph (3) of this Code section or any municipality as defined in paragraph (7) of this Code section. The term does not include any school district of this state nor any sheriff, clerk of the superior court, judge of the probate court, or tax commissioner or the office, personnel, or services provided by such elected officials.

(5.3) "Mechanisms" includes, but is not limited to, intergovernmental agreements, ordinances, resolutions, and local Acts of the General Assembly in effect on July 1, 1997, or executed thereafter.

(6) "Minimum standards and procedures" means the minimum standards and procedures for preparation of comprehensive plans, for implementation of comprehensive plans, and for participation in the coordinated and comprehensive planning process, as established by the department, in accordance with Article 1 of Chapter 8 of Title 50. Minimum standards and procedures shall include any standards and procedures for such purposes prescribed by a regional commission for counties and municipalities within its region and approved in advance by the department.

(7) "Municipality" means any municipal corporation of the state and any consolidated city-county government of the state.

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(8) "Region" means the territorial area within the boundaries of operation for any regional commission, as such boundaries shall be established from time to time by the board of the department.

(9) "Regional commission" means a regional commission established under Article 2 of Chapter 8 of Title 50.

*Current through the 2017 Regular Session*

**Title 36. Local Government**  
**Provisions Applicable to Counties and Municipal Corporations**  
**Chapter 71. Development Impact Fees**  
**O.C.G.A. § 36-71-2. Definitions**

As used in this chapter, the term:

(1) "Capital improvement" means an improvement with a useful life of ten years or more, by new construction or other action, which increases the service capacity of a public facility.

(2) "Capital improvements element" means a component of a comprehensive plan adopted pursuant to Chapter 70 of this title which sets out projected needs for system improvements during a planning horizon established in the comprehensive plan, a schedule of capital improvements that will meet the anticipated need for system improvements, and a description of anticipated funding sources for each required improvement.

(3) "Comprehensive plan" has the same meaning as provided for in Chapter 70 of this title.

(4) "Developer" means any person or legal entity undertaking development.

(5) "Development" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, any of which creates additional demand and need for public facilities.

(6) "Development approval" means any written authorization from a municipality or county which authorizes the commencement of construction.

(7) "Development exaction" means a requirement attached to a development approval or other municipal or county action approving or authorizing a particular development project, including

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but not limited to a rezoning, which requirement compels the payment, dedication, or contribution of goods, services, land, or money as a condition of approval.

(8) "Development impact fee" means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development.

(9) "Encumber" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a municipality or county.

(10) "Feepayer" means that person who pays a development impact fee or his successor in interest where the right or entitlement to any refund of previously paid development impact fees which is required by this chapter has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment of the right or entitlement to any refund of previously paid development impact fees, the right or entitlement shall be deemed "not to run with the land."

(11) "Governmental entity" means any water authority, water and sewer authority, or water or waste-water authority created by or pursuant to an Act of the General Assembly of Georgia.

(12) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities in terms of demand to capacity ratios, the comfort and convenience of use or service of public facilities, or both.

(13) "Present value" means the current value of past, present, or future payments, contributions or dedications of goods, services, materials, construction, or money.

(14) "Project" means a particular development on an identified parcel of land.

(15) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement and the physical location of the improvement on site or off site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public

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facilities approved by the governing body of the municipality or county shall be considered a project improvement.

(16) "Proportionate share" means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project within the defined service area.

(17) "Public facilities" means:

(A) Water supply production, treatment, and distribution facilities;

(B) Waste-water collection, treatment, and disposal facilities;

(C) Roads, streets, and bridges, including rights of way, traffic signals, landscaping, and any local components of state or federal highways;

(D) Storm-water collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

(E) Parks, open space, and recreation areas and related facilities;

(F) Public safety facilities, including police, fire, emergency medical, and rescue facilities; and

(G) Libraries and related facilities.

(18) "Service area" means a geographic area defined by a municipality, county, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles or both.

(19) "System improvement costs" means costs incurred to provide additional public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees), and expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the capital improvement element, and administrative costs, provided that such administrative costs shall

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not exceed 3 percent of the total amount of the costs. Projected interest charges and other finance costs may be included if the impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the municipality or county to finance the capital improvements element but such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

(20) "System improvements" means capital improvements that are public facilities and are designed to provide service to the community at large, in contrast to "project improvements."

*Current through the 2017 Regular Session*

### **Title 36. Local Government**

#### **Provisions Applicable to Counties and Municipal Corporations**

#### **Chapter 76. Expedited Franchising of Cable and Video Services**

#### **O.C.G.A. § 36-76-9. Demarcation point service outlet; service to schools and libraries**

A cable service provider or video service provider shall, upon written request by a municipality or county, install, at no charge, one service outlet to a demarcation point located on the outside of any designated municipal or county building or multibuilding complex, provided such building demarcation point is within 125 feet from the cable service provider or video service provider's activated distribution point of connection. A cable service provider or video service provider shall not be required to extend its facilities beyond the appropriate demarcation point located outside the building or to perform any inside wiring. The cable service provider or video service provider shall provide complimentary basic cable service or video service to public schools and public libraries over that one service outlet free of charge, which service shall not be used for commercial purposes. The cable service provider or video service provider shall provide complimentary basic cable service or video service to public buildings other than public schools and public libraries only to the extent such a complimentary service arrangement existed under the terms of a local franchise agreement in effect as of January 1, 2007, and shall continue only until the local franchise agreement would have expired under its own terms; provided, however, that such provider shall not be precluded from providing such additional complimentary service at its option. The municipality or county may not receive service at the same building from more than one cable service provider or video service provider at a time under this Code section.

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### **Title 42. Penal Institutions**

#### **Chapter 1. General Provisions**

##### **Article 2. Sexual Offender Registration Review Board**

##### **O.C.G.A. § 42-1-15. Restrictions on residence of or loitering by registered sex offender for acts committed after July 1, 2008; employment of sexually dangerous predator; civil liability or criminal prosecution of entity other than individual required to register**

(a) As used in this Code section, the term:

(1) "Individual" means a person who is required to register pursuant to Code Section 42-1-12.

(2) "Lease" means a right of occupancy pursuant to a written and valid lease or rental agreement.

(3) "Minor" means any person who is under 18 years of age.

(4) "Volunteer" means to engage in an activity in which one could be, and ordinarily would be, employed for compensation, and which activity involves working with, assisting, or being engaged in activities with minors; provided, however, that such term shall not include participating in activities limited to persons who are 18 years of age or older or participating in worship services or engaging in religious activities or activities at a place of worship that do not include supervising, teaching, directing, or otherwise participating with minors who are not supervised by an adult who is not an individual required to register pursuant to Code Section 42-1-12.

(b) On and after July 1, 2008, no individual shall reside within 1,000 feet of any child care facility, church, school, or area where minors congregate if the commission of the act for which such individual is required to register occurred on or after July 1, 2008. Such distance shall be determined by measuring from the outer boundary of the property on which the individual resides to the outer boundary of the property of the child care facility, church, school, or area where minors congregate at their closest points.

(c)(1) On and after July 1, 2008, no individual shall be employed by or volunteer at any child care facility, school, or church or by or at any business or entity that is located within 1,000 feet of a child care facility, a school, or a church if the commission of the act for which such individual is required to register occurred on or after July 1, 2008. Such distance shall be determined by measuring from the outer boundary of the property of the location at which such individual is employed or volunteers to the outer boundary of the child care facility, school, or church at their closest points.

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(2) On or after July 1, 2008, no individual who is a sexually dangerous predator shall be employed by or volunteer at any business or entity that is located within 1,000 feet of an area where minors congregate if the commission of the act for which such individual is required to register occurred on or after July 1, 2008. Such distance shall be determined by measuring from the outer boundary of the property of the location at which the sexually dangerous predator is employed or volunteers to the outer boundary of the area where minors congregate at their closest points.

(d) Notwithstanding any ordinance or resolution adopted pursuant to Code Section 16-6-24 or subsection (d) of Code Section 16-11-36, it shall be unlawful for any individual to loiter, as prohibited by Code Section 16-11-36, at any child care facility, school, or area where minors congregate.

(e)(1) If an individual owns or leases real property and resides on such property and a child care facility, church, school, or area where minors congregate thereafter locates itself within 1,000 feet of such property, or if an individual has established employment at a location and a child care facility, church, or school thereafter locates itself within 1,000 feet of such employment, or if a sexual predator has established employment and an area where minors congregate thereafter locates itself within 1,000 feet of such employment, such individual shall not be guilty of a violation of subsection (b) or (c) of this Code section, as applicable, if such individual successfully complies with subsection (f) of this Code section.

(2) An individual owning or leasing real property and residing on such property or being employed within 1,000 feet of a prohibited location, as specified in subsection (b) or (c) of this Code section, shall not be guilty of a violation of this Code section if such individual had established such property ownership, leasehold, or employment prior to July 1, 2008, and such individual successfully complies with subsection (f) of this Code section.

(f)(1) If an individual is notified that he or she is in violation of subsection (b) or (c) of this Code section, and if such individual claims that he or she is exempt from such prohibition pursuant to subsection (e) of this Code section, such individual shall provide sufficient proof demonstrating his or her exemption to the sheriff of the county where the individual is registered within ten days of being notified of any such violation.

(2) For purposes of providing proof of residence, the individual may provide a driver's license, government issued identification, or any other documentation evidencing where the individual's habitation is fixed. For purposes of providing proof of property ownership, the individual shall

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provide a copy of his or her warranty deed, quitclaim deed, or voluntary deed, or other documentation evidencing property ownership.

(3) For purposes of providing proof of a leasehold, the individual shall provide a copy of the applicable lease agreement. Leasehold exemptions shall only be for the duration of the executed lease.

(4) For purposes of providing proof of employment, the individual may provide an Internal Revenue Service Form W-2, a pay check, or a notarized verification of employment from the individual's employer, or other documentation evidencing employment. Such employment documentation shall evidence the location in which such individual actually carries out or performs the functions of his or her job.

(5) Documentation provided pursuant to this subsection may be required to be date specific, depending upon the individual's exemption claim.

(g) Any individual who knowingly violates this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than ten nor more than 30 years.

(h) Nothing in this Code section shall create, either directly or indirectly, any civil cause of action against or result in criminal prosecution of any person, firm, corporation, partnership, trust, or association other than an individual required to be registered under Code Section 42-1-12.

*Current through the 2017 Regular Session*

A public library is "a place where minors congregate." O.C.G.A. 42-1-12(a)(3).

See Chapter 2: Patrons, Registered Sex Offenders at § 2.14 [a].

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### **Title 43. Professions and Businesses**

#### **Chapter 24. Librarians**

##### **O.C.G.A. § 43-24-1. Definitions**

As used in this chapter, the term:

- (1) "Board" means the State Board for the Certification of Librarians.
- (2) "Librarian" means a person with specialized training as identified in this chapter and in the administrative rules and regulations applicable to this chapter and possessing the necessary training and qualifications to plan, organize, communicate, and administer successfully the use of the library's materials and services.
- (3) "Library" means an organization providing services and informational materials in a variety of formatting, including, but not limited to, books, films, tapes, microforms, and periodicals and having no fewer than 3,000 items which have been selected, acquired, and organized for dissemination.

*Current through the 2017 Regular Session*

### **Title 43. Professions and Businesses**

#### **Chapter 24. Librarians**

##### **O.C.G.A. § 43-24-2. State Board for the Certification of Librarians; creation; membership; appointment; terms of office; expenses; vacancies**

- (a) The State Board for the Certification of Librarians is created, to consist of six persons as follows:
  - (1) Three librarians certified under this chapter, including one public librarian, one special librarian, and one other currently practicing librarian, and one person who shall be a trustee of a public library;
  - (2) A member to be appointed from the public at large who shall have no connection whatsoever with the library profession; and
  - (3) The director of public library services of the Board of Regents of the University System of Georgia.

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(b) The members referred to in paragraphs (1) and (2) of subsection (a) of this Code section shall be appointed by the Governor and shall be confirmed by the Senate.

(c) The terms of the five members appointed pursuant to paragraphs (1) and (2) of subsection (a) of this Code section shall be five years. The term of the director of public library services of the Board of Regents of the University System of Georgia shall be coextensive with the term of office of this position.

(d) Members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(e) If there is a vacancy on the board, the Governor shall appoint a member to serve the unexpired term.

*Current through the 2017 Regular Session*

**Title 43. Professions and Businesses**  
**Chapter 24. Librarians**  
**O.C.G.A. § 43-24-3. Jurisdiction of Division Director**

The same jurisdiction, duties, powers, and authority which the division director has with reference to other professional licensing boards is conferred upon that director with respect to the board.

*Current through the 2017 Regular Session*

**Title 43. Professions and Businesses**  
**Chapter 24. Librarians**  
**O.C.G.A. § 43-24-4. Only licensed librarians to be employed; exceptions**

Any public library serving a political subdivision or subdivisions having a population of over 5,000 according to the United States decennial census of 1970 or any future such census and every library operated by the state or its authority, including libraries of institutions of higher learning, shall not employ in the position of librarian a person who does not hold a librarian's certificate issued by the board. No public funds shall be paid to any library failing to comply with this chapter, provided that nothing in this chapter shall apply to law libraries of counties and

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municipalities, to libraries of public elementary and high schools, or to libraries of the University System of Georgia.

*Current through the 2017 Regular Session*

### **Title 43. Professions and Businesses**

#### **Chapter 24. Librarians**

##### **O.C.G.A. § 43-24-5. Certificates; grades; examinations**

The board shall have authority to establish grades of certificates for librarians, to prescribe and hold examinations, to require submission of credentials to establish the qualifications of those seeking certificates as librarians, and to issue certificates of librarianship to qualified persons in accordance with such rules and regulations as it may prescribe.

*Current through the 2017 Regular Session*

### **Title 43. Professions and Businesses**

#### **Chapter 24. Librarians**

##### **O.C.G.A. § 43-24-6. Applications for certificates; fees; renewals; duplicate certificates**

(a) All applicants for a librarian's certificate shall file an application with the division director, accompanied by a fee which shall be set by the board.

(b) Each certificate issued shall be renewable biennially.

(c) Any certified librarian requesting a duplicate certificate shall be charged a fee as shall be set by the board.

*Current through the 2017 Regular Session*

### **Title 43. Professions and Businesses**

#### **Chapter 24. Librarians**

##### **O.C.G.A. § 43-24-7. Continuing Education**

(a) The board shall be authorized to require persons holding a certificate under this chapter to complete board approved continuing education of not less than ten hours biennially as a condition of certificate renewal. The board shall be authorized to approve programs offered by

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professional associations, educational institutions, government agencies, and bibliographic utilities, and others as it deems appropriate.

(b) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) The board shall have the authority to appoint a committee or committees composed of certified librarians, as it deems appropriate, to administer, implement, and otherwise carry out the provisions of this chapter relating to continuing education.

*Current through the 2017 Regular Session*

### **Georgia Smokefree Air Act O.C.G.A. §§ 31-12A-1 through 31-12A-13**

#### **Title 31. Health Chapter 12A. Smokefree Air O.C.G.A. § 31-12A-1. Short title**

This chapter shall be known and may be cited as the "Georgia Smokefree Air Act of 2005."

*Current through the 2017 Regular Session*

#### **Title 31. Health Chapter 12A. Smokefree Air O.C.G.A. § 31-12A-2. Definitions**

As used in this chapter, the term:

(1) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

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- (2) "Business" means any corporation, sole proprietorship, partnership, limited partnership, limited liability corporation, limited liability partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether for profit or nonprofit.
- (3) "Employee" means an individual who is employed by a business in consideration for direct or indirect monetary wages or profit.
- (4) "Employer" means an individual or a business that employs one or more individuals.
- (5) "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.
- (6) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, homes for the chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities. This definition shall not include long-term care facilities as defined in paragraph (3) of Code Section 31-8-81.
- (7) "Infiltrate" means to permeate an enclosed area by passing through its walls, ceilings, floors, windows, or ventilation systems to the extent that an individual can smell secondhand smoke.
- (8) "Local governing authority" means a county or municipal corporation of the state.
- (9) "Place of employment" means an enclosed area under the control of a public or private employer that employees utilize during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. A private residence is not a place of employment unless it is used as a licensed child care, adult day-care, or health care facility. This term shall not include vehicles used in the course of employment.
- (10) "Public place" means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a public place unless it is used as a licensed child care, adult day-care, or health care facility.

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(11) "Restaurant" means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term shall include a bar area within any restaurant.

(12) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(13) "Secondhand smoke" means smoke emitted from lighted, smoldering, or burning tobacco when the person smoking is not inhaling, smoke emitted at the mouthpiece during puff drawing, and smoke exhaled by the person smoking.

(14) "Service line" means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(15) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(16) "Smoking" means inhaling, exhaling, burning, or carrying any lighted tobacco product including cigarettes, cigars, and pipe tobacco.

(17) "Smoking area" means a separately designated enclosed room which need not be entered by an employee in order to conduct business that is designated as a smoking area and, when so designated as a smoking area, shall not be construed as to deprive employees of a nonsmoking lounge, waiting area, or break room.

(18) "Sports arena" means enclosed stadiums and enclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

*Current through the 2017 Regular Session*

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## Appendix B: Georgia's Library Laws

### **Title 31. Health**

#### **Chapter 12A. Smokefree Air**

##### **O.C.G.A. § 31-12A-3. Smoking prohibited in state buildings**

Smoking shall be prohibited in all enclosed facilities of, including buildings owned, leased, or operated by, the State of Georgia, its agencies and authorities, and any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special Act of the General Assembly or by ordinance or resolution of the governing body of a county or municipal corporation individually or jointly with other political subdivisions or municipalities of the state.

*Current through the 2017 Regular Session*

### **Title 31. Health**

#### **Chapter 12A. Smokefree Air**

##### **O.C.G.A. § 31-12A-4. Smoking prohibited in enclosed public places**

Except as otherwise specifically authorized in Code Section 31-12A-6, smoking shall be prohibited in all enclosed public places in this state.

*Current through the 2017 Regular Session*

### **Title 31. Health**

#### **Chapter 12A. Smokefree Air**

##### **O.C.G.A. § 31-12A-5. Smoking prohibited in enclosed area within places of employment**

(a) Except as otherwise specifically provided in Code Section 31-12A-6, smoking shall be prohibited in all enclosed areas within places of employment, including, but not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

(b) Such prohibition on smoking shall be communicated to all current employees by July 1, 2005, and to each prospective employee upon their application for employment.

*Current through the 2017 Regular Session*

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### **Title 31. Health**

#### **Chapter 12A. Smokefree Air**

##### **O.C.G.A. § 31-12A-6. Areas exempt from smoking prohibitions**

(a) Notwithstanding any other provision of this chapter, the following areas shall be exempt from the provisions of Code Sections 31-12A-4 and 31-12A-5:

(1) Private residences, except when used as a licensed child care, adult day-care, or health care facility;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20 percent of rooms rented to guests in a hotel or motel may be so designated;

(3) Retail tobacco stores, provided that secondhand smoke from such stores does not infiltrate into areas where smoking is prohibited under the provisions of this chapter;

(4) Long-term care facilities as defined in paragraph (3) of Code Section 31-8-81;

(5) Outdoor areas of places of employment;

(6) Smoking areas in international airports, as designated by the airport operator;

(7) All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, all tobacco storage facilities, and any other entity set forth in Code Section 10-13A-2;

(8) Private and semiprivate rooms in health care facilities licensed under this title that are occupied by one or more persons, all of whom have written authorization by their treating physician to smoke;

(9) Bars and restaurants, as follows:

(A) All bars and restaurants to which access is denied to any person under the age of 18 and that do not employ any individual under the age of 18; or

(B) Private rooms in restaurants and bars if such rooms are enclosed and have an air handling system independent from the main air handling system that serves all other areas of the

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building and all air within the private room is exhausted directly to the outside by an exhaust fan of sufficient size;

(10) Convention facility meeting rooms and public and private assembly rooms contained within a convention facility not wholly or partially owned, leased, or operated by the State of Georgia, its agencies and authorities, or any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special Act of the General Assembly while these places are being used for private functions and where individuals under the age of 18 are prohibited from attending or working as an employee during the function;

(11) Smoking areas designated by an employer which shall meet the following requirements:

(A) The smoking area shall be located in a nonwork area where no employee, as part of his or her work responsibilities, shall be required to enter, except such work responsibilities shall not include custodial or maintenance work carried out in the smoking area when it is unoccupied;

(B) Air handling systems from the smoking area shall be independent from the main air handling system that serves all other areas of the building and all air within the smoking area shall be exhausted directly to the outside by an exhaust fan of sufficient size and capacity for the smoking area and no air from the smoking area shall be recirculated through or infiltrate other parts of the building; and

(C) The smoking area shall be for the use of employees only.

The exemption provided for in this paragraph shall not apply to restaurants and bars;

(12) Common work areas, conference and meeting rooms, and private offices in private places of employment, other than medical facilities, that are open to the general public by appointment only; except that smoking shall be prohibited in any public reception area of such place of employment; and

(13) Private clubs, military officer clubs, and noncommissioned officer clubs.

(b) In order to qualify for exempt status under subsection (a) of this Code section, any area described in subsection (a) of this Code section, except for areas described in paragraph (1) of subsection (a) of this Code section, shall post conspicuously at every entrance a sign indicating that smoking is permitted.

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### **Title 31. Health**

#### **Chapter 12A. Smokefree Air**

##### **O.C.G.A. § 31-12A-7. Declaration of area as nonsmoking place**

Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection (a) of Code Section 31-12A-8 is posted.

*Current through the 2017 Regular Session*

### **Title 31. Health**

#### **Chapter 12A. Smokefree Air**

##### **O.C.G.A. § 31-12A-8. "No Smoking" signs; removal of ashtrays**

(a) "No Smoking" signs or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it may be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public place and place of employment where smoking is prohibited by this chapter.

(b) All ashtrays shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager, or other person in control of the area, unless such ashtray is permanently affixed to an existing structure.

*Current through the 2017 Regular Session*

### **Title 31. Health**

#### **Chapter 12A. Smokefree Air**

##### **O.C.G.A § 31-12A-9. Continuing programs to explain and clarify chapter**

The Department of Public Health and the agency designated by each local governing authority in this state may engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it and to guide owners, operators, and managers in their compliance with it. The program may include print or electronic publication of a brochure for affected businesses and individuals explaining the provisions of this chapter.

*Current through the 2017 Regular Session*

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### **Title 31. Health**

#### **Chapter 12A. Smokefree Air**

##### **O.C.G.A. § 31-12A-10. Authority to enforce compliance**

The Department of Public Health and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with this chapter and the rules and regulations adopted and promulgated under this chapter and, in connection therewith, to enter upon and inspect the premises of any establishment or business at any reasonable time and in a reasonable manner, as provided in Article 2 of Chapter 5 of this title.

*Current through the 2017 Regular Session*

### **Title 31. Health**

#### **Chapter 12A. Smokefree Air**

##### **O.C.G.A. § 31-12A-11. Annual report for local operating procedures**

The county boards of health may annually request other governmental and educational agencies having facilities within the area of the local government to establish local operating procedures in cooperation and compliance with this chapter.

*Current through the 2017 Regular Session*

### **Title 31. Health**

#### **Chapter 12A. Smokefree Air**

##### **O.C.G.A. § 31-12A-12. Cumulative nature of chapter**

This chapter shall be cumulative to and shall not prohibit the enactment of any other general or local laws, rules, and regulations of state or local governing authorities or local ordinances prohibiting smoking which are more restrictive than this chapter or are not in direct conflict with this chapter.

*Current through the 2017 Regular Session*

### **Title 31. Health**

#### **Chapter 12A. Smokefree Air**

##### **O.C.G.A. § 31-12A-13. Construction and application of chapter**

(a) This chapter shall not be construed to permit smoking where it is otherwise restricted by other applicable laws.

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(b) Nothing in this chapter shall be construed as to repeal the provisions of Code Section 16-12-2.

(c) This chapter shall be liberally construed so as to further its purposes.

*Current through the 2017 Regular Session*

Georgia Department of Public Health (2015). Georgia Smokefree Air Act of 2005: A guide for business owners and employees (accessed April 4, 2018 at [https://dph.georgia.gov/sites/dph.georgia.gov/files/SmokeFree%20Act\\_Booklet.pdf](https://dph.georgia.gov/sites/dph.georgia.gov/files/SmokeFree%20Act_Booklet.pdf))

Georgia Department of Public Health. Georgia Smokefree Air Act of 2005: Factsheet (accessed April 4, 2018 at [https://dph.georgia.gov/sites/dph.georgia.gov/files/SmokeFree%20Act\\_Factsheet.pdf](https://dph.georgia.gov/sites/dph.georgia.gov/files/SmokeFree%20Act_Factsheet.pdf))

### **Open Meetings Act**

#### **Title 50. State Government**

#### **Chapter 14. Open and Public Meetings**

#### **O.C.G.A. § 50-14-1. Meetings of departments, agencies, boards, etc., to be open to public; notice of meetings and agenda**

(a) As used in this chapter, the term:

(1) "Agency" means:

(A) Every state department, agency, board, bureau, office, commission, public corporation, and authority;

(B) Every county, municipal corporation, school district, or other political subdivision of this state;

(C) Every department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;

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(D) Every city, county, regional, or other authority established pursuant to the laws of this state; and

(E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing body of any agency as defined in this paragraph which constitutes more than 33 1/3 percent of the funds from all sources of such organization; provided, however, that this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a subagency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) "Executive session" means a portion of a meeting lawfully closed to the public.

(3)(A) "Meeting" means :

(i) The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or

(ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body, at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.

(B) Meeting shall not include:

(i) The gathering of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;

(ii) The gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken by the members;

(iii) The gathering of a quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal

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government at state or federal offices and at which no official action is to be taken by the members;

(iv) The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or

(v) The gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum.

This subparagraph's exclusions from the definition of the term meeting shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

(b)(1) Except as otherwise provided by law, all meetings shall be open to the public. All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.

(2) Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision shall be commenced within 90 days of the date such contested action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision.

(c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual and sound recording during open meetings shall be permitted.

(d)(1) Every agency subject to this chapter shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted at least one week in advance and maintained in a

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conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter as well as on the agency's website, if any. Meetings shall be held in accordance with a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting.

(2) For any meeting, other than a regularly scheduled meeting of the agency for which notice has already been provided pursuant to this chapter, written or oral notice shall be given at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in such county at least equal to that of the legal organ; provided, however, that, in counties where the legal organ is published less often than four times weekly, sufficient notice shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet at least 24 hours in advance of the called meeting. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately or as soon as practicable make the information available upon inquiry to any member of the public. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda shall be provided by facsimile, e-mail, or mail through a self-addressed, stamped envelope provided by the requestor.

(3) When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances, including notice to the county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes. Such reasonable notice shall also include, upon written request within the previous calendar year from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet.

(e)(1) Prior to any meeting, the agency or committee holding such meeting shall make available an agenda of all matters expected to come before the agency or committee at such meeting. The agenda shall be available upon request and shall be posted at the meeting site, as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting and shall be posted, at a minimum, at some time during the two-week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.

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(2)(A) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting.

(B) The regular minutes of a meeting subject to this chapter shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency or its committee, but in no case later than immediately following its next regular meeting; provided, however, that nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Such minutes shall, at a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, the identity of the persons making and seconding the motion or other proposal, and a record of all votes. The name of each person voting for or against a proposal shall be recorded. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.

(C) Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. In the case of executive sessions where matters subject to the attorney-client privilege are discussed, the fact that an attorney-client discussion occurred and its subject shall be identified, but the substance of the discussion need not be recorded and shall not be identified in the minutes. Such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session.

(f) An agency with state-wide jurisdiction or committee of such an agency shall be authorized to conduct meetings by teleconference, provided that any such meeting is conducted in compliance with this chapter.

(g) Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees thereof not otherwise permitted by subsection (f) of this Code section to conduct meetings by teleconference may meet by means of teleconference so long as the notice required by this chapter is provided and means are afforded for the public to have simultaneous access to the teleconference meeting. On any other occasion of the meeting of an agency or committee thereof, and so long as a quorum is present in person, a member may participate by teleconference if necessary due to reasons of health or absence from the jurisdiction so long as the other requirements of this chapter are met. Absent emergency conditions or the written opinion of a physician or other health professional that reasons of health prevent a member's physical presence, no member

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shall participate by teleconference pursuant to this subsection more than twice in one calendar year.

*Current through the 2017 Regular Session*

See Chapter 5: Open Meetings/Open Records

### **Title 50. State Government**

#### **Chapter 14. Open and Public Meetings**

##### **O.C.G.A. § 50-14-2. Attorney-client privilege and confidential tax matters not affected**

This chapter shall not be construed so as to repeal in any way:

- (1) The attorney-client privilege recognized by state law to the extent that a meeting otherwise required to be open to the public under this chapter may be closed in order to consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved; provided, however, the meeting may not be closed for advice or consultation on whether to close a meeting; and
- (2) Those tax matters which are otherwise made confidential by state law.

*Current through the 2017 Regular Session*

### **Title 50. State Government**

#### **Chapter 14. Open and Public Meetings**

##### **O.C.G.A. § 50-14-3. Exceptions**

(a) This chapter shall not apply to the following:

- (1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;
- (2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition such board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;

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## Appendix B: Georgia's Library Laws

(3) Meetings of the Georgia Bureau of Investigation or any other law enforcement or prosecutorial agency in the state, including grand jury meetings;

(4) Adoptions and proceedings related thereto;

(5) Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution to the conflict, and any such caucus shall not be subject to the requirements of this chapter. Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement, memorandum of agreement, memorandum of understanding, or other similar document, however denominated, in which an agency has formally resolved a claim or dispute shall be subject to the provisions of Article 4 of Chapter 18 of this title;

(6) Meetings:

(A) Of any medical staff committee of a public hospital;

(B) Of the governing authority of a public hospital or any committee thereof when performing a peer review or medical review function as set forth in Code Section 31-7-15, Articles 6 and 6A of Chapter 7 of Title 31, or under any other applicable federal or state statute or regulation; and

(C) Of the governing authority of a public hospital or any committee thereof in which the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law is discussed, considered, or voted upon;

(7) Incidental conversation unrelated to the business of the agency; or

(8) E-mail communications among members of an agency; provided, however, that such communications shall be subject to disclosure pursuant to Article 4 of Chapter 18 of this title.

(b) Subject to compliance with the other provisions of this chapter, executive sessions shall be permitted for:

(1) Meetings when any agency is discussing or voting to:

(A) Authorize the settlement of any matter which may be properly discussed in executive session in accordance with paragraph (1) of Code Section 50-14-2;

(B) Authorize negotiations to purchase, dispose of, or lease property;

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(C) Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;

(D) Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or

(E) Enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote.

No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote;

(2) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee or interviewing applicants for the position of the executive head of an agency. This exception shall not apply to the receipt of evidence or when hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;

(3) Meetings of the board of trustees or the investment committee of any public retirement system created by or subject to Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition; and

(4) Portions of meetings during which that portion of a record made exempt from public inspection or disclosure pursuant to Article 4 of Chapter 18 of this title is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed.

*Current through the 2017 Regular Session*

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### **Title 50. State Government**

#### **Chapter 14. Open and Public Meetings**

##### **O.C.G.A. § 50-14-4. Procedure for closure of meetings**

(a) When any meeting of an agency is closed to the public pursuant to any provision of this chapter, the specific reasons for such closure shall be entered upon the official minutes, the meeting shall not be closed to the public except by a majority vote of a quorum present for the meeting, the minutes shall reflect the names of the members present and the names of those voting for closure, and that part of the minutes shall be made available to the public as any other minutes. Where a meeting of an agency is devoted in part to matters within the exceptions provided by law, any portion of the meeting not subject to any such exception, privilege, or confidentiality shall be open to the public, and the minutes of such portions not subject to any such exception shall be taken, recorded, and open to public inspection as provided in subsection (e) of Code Section 50-14-1.

(b)(1) When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

(2) In the event that one or more persons in an executive session initiates a discussion that is not authorized pursuant to Code Section 50-14-3, the presiding officer shall immediately rule the discussion out of order and all present shall cease the questioned conversation. If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer shall immediately adjourn the executive session.

*Current through the 2017 Regular Session*

See Chapter 5: Open Meetings/Open Records, Procedural Requirements at § 5.15 [b].

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## Appendix B: Georgia's Library Laws

### **Title 50. State Government** **Chapter 14. Open and Public Meetings** **O.C.G.A. § 50-14-5. Superior court jurisdiction**

(a) The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this chapter, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person, firm, corporation, or other entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this chapter.

(b) In any action brought to enforce the provisions of this chapter in which the court determines that an agency acted without substantial justification in not complying with this chapter, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of having provided access to such information.

*Current through the 2017 Regular Session*

### **Title 50. State Government** **Chapter 14. Open and Public Meetings** **O.C.G.A. § 50-14-6. Violations relating to open meetings**

Any person knowingly and willfully conducting or participating in a meeting in violation of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this chapter against any person who negligently violates the terms of this chapter in an amount not to exceed \$1,000.00 for the first violation. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions.

*Current through the 2017 Regular Session*

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### Open Records Act

#### Title 50. State Government

#### Chapter 18. State Printing and Documents

#### O.C.G.A. § 50-18-70. Legislative findings and declaration; definitions

(a) The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that public records should be made available for public inspection without delay. This article shall be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only those portions of records addressed by such exception.

(b) As used in this article, the term:

(1) Agency shall have the same meaning as in Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization that has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state, their officers, or any combination thereof and derives more than 33 1/3 percent of its general operating budget from payments from such political subdivisions.

(2) "Public record" means all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.

*Current through the 2017 Regular Session*

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### **Title 50. State Government**

#### **Chapter 18. State Printing and Documents**

##### **O.C.G.A. § 50-18-71. Inspection and copies of public records; request procedures; fees and charges**

(a) All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure. Records shall be maintained by agencies to the extent and in the manner required by Article 5 of this chapter.

(b)(1)(A) Agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request; provided, however, that nothing in this chapter shall require agencies to produce records in response to a request if such records did not exist at the time of the request. In those instances where some, but not all, records are available within three business days, an agency shall make available within that period those records that can be located and produced. In any instance where records are unavailable within three business days of receipt of the request, and responsive records exist, the agency shall, within such time period, provide the requester with a description of such records and a timeline for when the records will be available for inspection or copying and provide the responsive records or access thereto as soon as practicable.

(B) A request made pursuant to this article may be made to the custodian of a public record orally or in writing. An agency may, but shall not be obligated to, require that all written requests be made upon the responder's choice of one of the following: the agency's director, chairperson, or chief executive officer, however denominated; the senior official at any satellite office of an agency; a clerk specifically designated by an agency as the custodian of agency records; or a duly designated open records officer of an agency; provided, however, that the absence or unavailability of the designated agency officer or employee shall not be permitted to delay the agency's response. At the time of inspection, any person may make photographic copies or other electronic reproductions of the records using suitable portable devices brought to the place of inspection. Notwithstanding any other provision of this chapter, an agency may, in its discretion, provide copies of a record in lieu of providing access to the record when portions of the record contain confidential information that must be redacted.

(2) Any agency that designates one or more open records officers upon whom requests for inspection or copying of records may be delivered shall make such designation in writing and shall immediately provide notice to any person upon request, orally or in writing, of those open records officers. If the agency has elected to designate an open records officer, the agency shall so notify the legal organ of the county in which the agency's principal offices reside and, if the agency has a website, shall also prominently display such designation on the agency's website.

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In the event an agency requires that requests be made upon the individuals identified in subparagraph (B) of paragraph (1) of this subsection, the three-day period for response to a written request shall not begin to run until the request is made in writing upon such individuals. An agency shall permit receipt of written requests by e-mail or facsimile transmission in addition to any other methods of transmission approved by the agency, provided such agency uses e-mail or facsimile in the normal course of its business.

(3) The enforcement provisions of Code Sections 50-18-73 and 50-18-74 shall be available only to enforce compliance and punish noncompliance when a written request is made consistent with this subsection and shall not be available when such request is made orally.

(c)(1) An agency may impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the production of records pursuant to this article. An agency shall utilize the most economical means reasonably calculated to identify and produce responsive, nonexcluded documents. Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply when certified copies or other records to which a specific fee may apply are sought. In all other instances, the charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.

(2) In addition to a charge for the search, retrieval, or redaction of records, an agency may charge a fee for the copying of records or data, not to exceed 10¢ per page for letter or legal size documents or, in the case of other documents, the actual cost of producing the copy. In the case of electronic records, the agency may charge the actual cost of the media on which the records or data are produced.

(3) Whenever any person has requested to inspect or copy a public record and does not pay the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully estimated and agreed to pursuant to this article, and the agency has incurred the agreed-upon costs to make the records available, regardless of whether the requester inspects or accepts copies of the records, the agency shall be authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments by such agency.

(d) In any instance in which an agency is required to or has decided to withhold all or part of a requested record, the agency shall notify the requester of the specific legal authority exempting the requested record or records from disclosure by Code section, subsection, and paragraph within a reasonable amount of time not to exceed three business days or in the event the search and retrieval of records is delayed pursuant to this subsection or pursuant to subparagraph

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(b)(1)(A) of this Code section, then no later than three business days after the records have been retrieved. In any instance in which an agency will seek costs in excess of \$25.00 for responding to a request, the agency shall notify the requester within a reasonable amount of time not to exceed three business days and inform the requester of the estimate of the costs, and the agency may defer search and retrieval of the records until the requester agrees to pay the estimated costs unless the requester has stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs. In any instance in which the estimated costs for production of the records exceeds \$500.00, an agency may insist on prepayment of the costs prior to beginning search, retrieval, review, or production of the records. Whenever any person who has requested to inspect or copy a public record has not paid the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully incurred, an agency may require prepayment for compliance with all future requests for production of records from that person until the costs for the prior production of records have been paid or the dispute regarding payment resolved.

(d.1) Any other provision of this Code section to the contrary notwithstanding, the period within which any production, access, response, or notice is required from an agency with respect to a request for records, other than salary information for nonclerical staff, of intercollegiate sports programs of any unit of the University System of Georgia, including athletic departments and related private athletic associations, shall be 90 business days from the date the agency received the request.

(e) Requests by civil litigants for records that are sought as part of or for use in any ongoing civil or administrative litigation against an agency shall be made in writing and copied to counsel of record for that agency contemporaneously with their submission to that agency. The agency shall provide, at no cost, duplicate sets of all records produced in response to the request to counsel of record for that agency unless the counsel of record for that agency elects not to receive the records.

(f) As provided in this subsection, an agency's use of electronic record-keeping systems must not erode the public's right of access to records under this article. Agencies shall produce electronic copies of or, if the requester prefers, printouts of electronic records or data from data base fields that the agency maintains using the computer programs that the agency has in its possession. An agency shall not refuse to produce such electronic records, data, or data fields on the grounds that exporting data or redaction of exempted information will require inputting range, search, filter, report parameters, or similar commands or instructions into an agency's computer system so long as such commands or instructions can be executed using existing computer programs that the agency uses in the ordinary course of business to access, support, or otherwise manage the records or data. A requester may request that electronic records, data,

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or data fields be produced in the format in which such data or electronic records are kept by the agency, or in a standard export format such as a flat file electronic American Standard Code for Information Interchange (ASCII) format, if the agency's existing computer programs support such an export format. In such instance, the data or electronic records shall be downloaded in such format onto suitable electronic media by the agency.

(g) Requests to inspect or copy electronic messages, whether in the form of e-mail, text message, or other format, should contain information about the messages that is reasonably calculated to allow the recipient of the request to locate the messages sought, including, if known, the name, title, or office of the specific person or persons whose electronic messages are sought and, to the extent possible, the specific data bases to be searched for such messages.

(h) In lieu of providing separate printouts or copies of records or data, an agency may provide access to records through a website accessible by the public. However, if an agency receives a request for data fields, an agency shall not refuse to provide the responsive data on the grounds that the data is available in whole or in its constituent parts through a website if the requester seeks the data in the electronic format in which it is kept. Additionally, if an agency contracts with a private vendor to collect or maintain public records, the agency shall ensure that the arrangement does not limit public access to those records and that the vendor does not impede public record access and method of delivery as established by the agency or as otherwise provided for in this Code section.

(i) Any computerized index of county real estate deed records shall be printed for purposes of public inspection no less than every 30 days, and any correction made on such index shall be made a part of the printout and shall reflect the time and date that such index was corrected.

(j) No public officer or agency shall be required to prepare new reports, summaries, or compilations not in existence at the time of the request.

*Current through the 2017 Regular Session*

See Chapter 5: Open Meetings/Open Records, Text Messages & Email at § 5.31 [c].

See Chapter 5: Open Meetings/Open Records, Responding to Open Records Requests, Sample Three-Day Letter at § 5.32.

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See Chapter 5: Open Meetings/Open Records, Permitted Charge & Prepayment at § 5.32 [f].

**Title 50. State Government**  
**Chapter 18. State Printing and Documents**  
**Article 4. Inspection of Public Records**  
**O.C.G.A. § 50-18-72. Exception of certain records**

(a) Public disclosure shall not be required for records that are:

- (1) Specifically required by federal statute or regulation to be kept confidential;
- (2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;
- (3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records is reasonably likely to disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation;
- (4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving such investigation and prosecution has become final or otherwise terminated; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution; and provided, further, that the release of booking photographs shall only be permissible in accordance with Code Section 35-1-18;
- (5) Individual Georgia Uniform Motor Vehicle Accident Reports, except upon the submission of a written statement of need by the requesting party to be provided to the custodian of records and to set forth the need for the report pursuant to this Code section; provided, however, that any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report shall be entitled, either personally or through a lawyer or other representative, to receive a copy of such report; and provided, further, that Georgia Uniform Motor Vehicle Accident Reports shall not be available in bulk for inspection or copying by any person absent a written statement showing the need for each such report pursuant to the requirements of this Code section. For the purposes of this subsection, the term "need" means

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that the natural person or legal entity who is requesting in person or by representative to inspect or copy the Georgia Uniform Motor Vehicle Accident Report:

- (A) Has a personal, professional, or business connection with a party to the accident;
- (B) Owns or leases an interest in property allegedly or actually damaged in the accident;
- (C) Was allegedly or actually injured by the accident;
- (D) Was a witness to the accident;
- (E) Is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;
- (F) Is a prosecutor or a publicly employed law enforcement officer;
- (G) Is alleged to be liable to another party as a result of the accident;
- (H) Is an attorney stating that he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;
- (I) Is gathering information as a representative of a news media organization; provided, however, that such representative submits a statement affirming that the use of such accident report is in compliance with Code Section 33-24-53. Any person who knowingly makes a false statement in requesting such accident report shall be guilty of a violation of Code Section 16-10-20;
- (J) Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, that this subparagraph shall apply only to accident reports on accidents that occurred more than 60 days prior to the request and which shall have the name, street address, telephone number, and driver's license number redacted;  
or
- (K) Is a governmental official, entity, or agency, or an authorized agent thereof, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties;

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(6) Jury list data, including, but not limited to, persons' names, dates of birth, addresses, ages, race, gender, telephone numbers, social security numbers, and when it is available, the person's ethnicity, and other confidential identifying information that is collected and used by The Council of Superior Court Clerks of Georgia for creating, compiling, and maintaining state-wide master jury lists and county master jury lists for the purpose of establishing and maintaining county jury source lists pursuant to the provisions of Chapter 12 of Title 15; provided, however, that when ordered by the judge of a court having jurisdiction over a case in which a challenge to the array of the grand or trial jury has been filed, The Council of Superior Court Clerks of Georgia, superior court clerk, or jury clerk shall provide data within the time limit established by the court for the limited purpose of such challenge. The Council of Superior Court Clerks of Georgia, superior court clerk, or jury clerk shall not be liable for any use or misuse of such data;

(7) Records consisting of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee;

(8) Records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged;

(9) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned;

(10) Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, the project is terminated or abandoned, or the agency in possession of the records takes a public vote regarding the sealed bid or sealed proposal, whichever comes first;

(11) Records which identify persons applying for or under consideration for employment or appointment as executive head of an agency or of a unit of the University System of Georgia; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position of executive head of an agency or five business days prior to the meeting at which final action or vote is to be taken on the position of president of a unit of the University System of Georgia, all documents concerning as many as three persons under consideration whom the agency has determined to be the best qualified for the position shall be subject to inspection and copying. Prior to the release of these documents, an agency may allow

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such a person to decline being considered further for the position rather than have documents pertaining to such person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or appointment process without conducting interviews or discussing or deliberating in executive session in a manner otherwise consistent with Chapter 14 of this title, it shall not be required to delay final action on the position. The agency shall not be required to release such records of other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency shall furnish the number of applicants and the composition of the list by such factors as race and sex. The agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process;

(12) Related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Budget and Research Office, provided that this exception shall not have any application to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly;

(13) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Board of Regents of the University System of Georgia when the owner or donor of such records wishes to place restrictions on access to the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale. This exemption shall not apply to any records prepared in the course of the operation of state or local governments of the State of Georgia;

(14) Records that contain information from the Department of Natural Resources inventory and register relating to the location and character of a historic property or of historic properties as those terms are defined in Code Sections 12-3-50.1 and 12-3-50.2 if the Department of Natural Resources through its Division of Historic Preservation determines that disclosure will create a substantial risk of harm, theft, or destruction to the property or properties or the area or place where the property or properties are located;

(15) Records of farm water use by individual farms as determined by water-measuring devices installed pursuant to Code Section 12-5-31 or 12-5-105; provided, however, that compilations of such records for the 52 large watershed basins as identified by the eight-digit United States Geologic Survey hydrologic code or an aquifer that do not reveal farm water use by individual farms shall be subject to disclosure under this article;

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(16) Agricultural or food system records, data, or information that are considered by the Department of Agriculture to be a part of the critical infrastructure, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "critical infrastructure" shall have the same meaning as in 42 U.S.C. Section 5195c(e). Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(17) Records, data, or information collected, recorded, or otherwise obtained that is deemed confidential by the Department of Agriculture for the purposes of the national animal identification system, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "national animal identification program" means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herd mates from their premises of origin. Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(18) Records that contain site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats on public or private property if the Department of Natural Resources determines that disclosure will create a substantial risk of harm, theft, or destruction to the species or habitats or the area or place where the species or habitats are located; provided, however, that the owner or owners of private property upon which rare species of plants or animals occur or upon which sensitive natural habitats are located shall be entitled to such information pursuant to this article;

(19) Records that reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by counties or municipalities in connection with neighborhood watch or public safety notification programs or with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems; provided, however, that initial police reports and initial incident reports shall remain subject to disclosure pursuant to paragraph (4) of this subsection;

(20)(A) Records that reveal an individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information,

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insurance or medical information in all records, unlisted telephone number if so designated in a public record, personal e-mail address or cellular telephone number, day and month of birth, and information regarding public utility, television, Internet, or telephone accounts held by private customers, provided that nonitemized bills showing amounts owed and amounts paid shall be available. Items exempted by this subparagraph shall be redacted prior to disclosure of any record requested pursuant to this article; provided, however, that such information shall not be redacted from such records if the person or entity requesting such records requests such information in a writing signed under oath by such person or a person legally authorized to represent such entity which states that such person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting; and provided, further, that such access shall be limited to social security numbers and day and month of birth; and provided, further, that the news media organization exception in this subparagraph shall not apply to paragraph (21) of this subsection.

(B) This paragraph shall have no application to:

(i) The disclosure of information contained in the records or papers of any court or derived therefrom including without limitation records maintained pursuant to Article 9 of Title 11;

(ii) The disclosure of information to a court, prosecutor, or publicly employed law enforcement officer, or authorized agent thereof, seeking records in an official capacity;

(iii) The disclosure of information to a public employee of this state, its political subdivisions, or the United States who is obtaining such information for administrative purposes, in which case, subject to applicable laws of the United States, further access to such information shall continue to be subject to the provisions of this paragraph;

(iv) The disclosure of information as authorized by the order of a court of competent jurisdiction upon good cause shown to have access to any or all of such information upon such conditions as may be set forth in such order;

(v) The disclosure of information to the individual in respect of whom such information is maintained, with the authorization thereof, or to an authorized agent thereof; provided, however, that the agency maintaining such information shall require proper identification of such individual or such individual's agent, or proof of authorization, as determined by such agency;

(vi) The disclosure of the day and month of birth and mother's birth name of a deceased individual;

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(vii) The disclosure by an agency of credit or payment information in connection with a request by a consumer reporting agency as that term is defined under the federal Fair Credit Reporting Act (15 U.S.C. Section 1681, et seq.);

(viii) The disclosure by an agency of information in its records in connection with the agency's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debts owed to the agency or individuals or entities whom the agency assists in the collection of debts owed to the individual or entity;

(ix) The disclosure of information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes; or

(x) The disclosure of the date of birth within criminal records.

(C) Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10-4. Any person injured thereby shall have a cause of action for invasion of privacy.

(D) In the event that the custodian of public records protected by this paragraph has good faith reason to believe that a pending request for such records has been made fraudulently, under false pretenses, or by means of false swearing, such custodian shall apply to the superior court of the county in which such records are maintained for a protective order limiting or prohibiting access to such records.

(E) This paragraph shall supplement and shall not supplant, overrule, replace, or otherwise modify or supersede any provision of statute, regulation, or law of the federal government or of this state as now or hereafter amended or enacted requiring, restricting, or prohibiting access to the information identified in subparagraph (A) of this paragraph and shall constitute only a regulation of the methods of such access where not otherwise provided for, restricted, or prohibited;

(21) Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account

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information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee's immediate family members or dependents. This paragraph shall not apply to public records that do not specifically identify public employees or their jobs, titles, or offices. For the purposes of this paragraph, the term "public employee" means any officer, employee, or former employee of:

- (A) The State of Georgia or its agencies, departments, or commissions;
  - (B) Any county or municipality or its agencies, departments, or commissions;
  - (C) Other political subdivisions of this state;
  - (D) Teachers in public and charter schools and nonpublic schools; or
  - (E) Early care and education programs administered through the Department of Early Care and Learning;
- (22) Records of the Department of Early Care and Learning that contain the:
- (A) Names of children and day and month of each child's birth;
  - (B) Names, addresses, telephone numbers, or e-mail addresses of parents, immediate family members, and emergency contact persons; or
  - (C) Names or other identifying information of individuals who report violations to the department;
- (23) Public records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. For purposes of this paragraph, the term "electronic signature" has the same meaning as that term is defined in Code Section 10-12-2;
- (24) Records acquired by an agency for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing program, including, but not limited to, the formation of carpools, vanpools, or buspools, the provision of transit routes,

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rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting;

(25)(A) Records the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, which shall be limited to the following:

(i) Security plans and vulnerability assessments for any public utility, technology infrastructure, building, facility, function, or activity in effect at the time of the request for disclosure or pertaining to a plan or assessment in effect at such time;

(ii) Any plan for protection against terrorist or other attacks that depends for its effectiveness in whole or in part upon a lack of general public knowledge of its details;

(iii) Any document relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks that depend for their effectiveness in whole or in part upon a lack of general public knowledge;

(iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts; and

(v) Records of any government sponsored programs concerning training relative to governmental security measures which would identify persons being trained or instructors or would reveal information described in divisions (i) through (iv) of this subparagraph.

(B) In the event of litigation challenging nondisclosure pursuant to this paragraph by an agency of a document covered by this paragraph, the court may review the documents in question in camera and may condition, in writing, any disclosure upon such measures as the court may find to be necessary to protect against endangerment of life, safety, or public property.

(C) As used in division (i) of subparagraph (A) of this paragraph, the term "activity" means deployment or surveillance strategies, actions mandated by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protection, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism, and proposed or actual plans and responses to requesting and receiving the National Pharmacy Stockpile;

(26) Unless the request is made by the accused in a criminal case or by his or her attorney, public records of an emergency 9-1-1 system, as defined in paragraph (5) of Code Section 46-5-

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122, containing information which would reveal the name, address, or telephone number of a person placing a call to a public safety answering point. Such information may be redacted from such records if necessary to prevent the disclosure of the identity of a confidential source, to prevent disclosure of material which would endanger the life or physical safety of any person or persons, or to prevent the disclosure of the existence of a confidential surveillance or investigation;

(26.1) In addition to the exemption provided by paragraph (26) of this subsection, audio recordings of a 9-1-1 telephone call to a public safety answering point which contain the speech in distress or cries in extremis of a caller who died during the call or the speech or cries of a person who was a minor at the time of the call, except to the following, provided that the person seeking the audio recording of a 9-1-1 telephone call submits a sworn affidavit that attests to the facts necessary to establish eligibility under this paragraph:

(A) A duly appointed representative of a deceased caller's estate;

(B) A parent or legal guardian of a minor caller;

(C) An accused in a criminal case when, in the good faith belief of the accused, the audio recording of the 9-1-1 telephone call is relevant to his or her criminal proceeding;

(D) A party to a civil action when, in the good faith belief of such party, the audio recording of the 9-1-1 telephone call is relevant to the civil action;

(E) An attorney for any of the persons identified in subparagraphs (A) through (D) of this paragraph; or

(F) An attorney for a person who may pursue a civil action when, in the good faith belief of such attorney, the audio recording of the 9-1-1 telephone call is relevant to the potential civil action;

(26.2) Audio and video recordings from devices used by law enforcement officers in a place where there is a reasonable expectation of privacy when there is no pending investigation, except to the following, provided that the person seeking the audio or video recording submits a sworn affidavit that attests to the facts necessary to establish eligibility under this paragraph:

(A) A duly appointed representative of a deceased's estate when the decedent was depicted or heard on such recording;

(B) A parent or legal guardian of a minor depicted or heard on such recording;

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(C) An accused in a criminal case when, in the good faith belief of the accused, such recording is relevant to his or her criminal proceeding;

(D) A party to a civil action when, in the good faith belief of such party, such recording is relevant to the civil action;

(E) An attorney for any of the persons identified in subparagraphs (A) through (D) of this paragraph; or

(F) An attorney for a person who may pursue a civil action when, in the good faith belief of such attorney, such recording is relevant to the potential civil action;

(27) Records of athletic or recreational programs, available through the state or a political subdivision of the state, that include information identifying a child or children 12 years of age or under by name, address, telephone number, or emergency contact, unless such identifying information has been redacted;

(28) Records of the State Road and Tollway Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon any toll project;

(29) Records maintained by public postsecondary educational institutions in this state and associated foundations of such institutions that contain personal information concerning donors or potential donors to such institutions or foundations; provided, however, that the name of any donor and the amount of donation made by such donor shall be subject to disclosure if such donor or any entity in which such donor has a substantial interest transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. As used in this paragraph, the term "transact business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount in excess of \$10,000.00 in the aggregate in a calendar year; and the term "substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity;

(30) Records of the Metropolitan Atlanta Rapid Transit Authority or of any other transit system that is connected to that system's TransCard, SmartCard, or successor or similar system which would reveal the financial records or travel history of any individual who is a purchaser of a TransCard, SmartCard, or successor or similar fare medium. Such financial records shall include, but not be limited to, social security number, home address, home telephone number, e-mail

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address, credit or debit card information, and bank account information but shall not include the user's name;

(31) Building mapping information produced and maintained pursuant to Article 10 of Chapter 3 of Title 38;

(32) Notwithstanding the provisions of paragraph (4) of this subsection, any physical evidence or investigatory materials that are evidence of an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 and are in the possession, custody, or control of law enforcement, prosecution, or regulatory agencies;

(33) Records that are expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-7-127;

(34) Any trade secrets obtained from a person or business entity that are required by law, regulation, bid, or request for proposal to be submitted to an agency. An entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10. If such entity attaches such an affidavit, before producing such records in response to a request under this article, the agency shall notify the entity of its intention to produce such records as set forth in this paragraph. If the agency makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the entity submitting the affidavit of its intent to disclose the information within ten days unless prohibited from doing so by an appropriate court order. In the event the entity wishes to prevent disclosure of the requested records, the entity may file an action in superior court to obtain an order that the requested records are trade secrets exempt from disclosure. The entity filing such action shall serve the requestor with a copy of its court filing. If the agency makes a determination that the specifically identified information does constitute a trade secret, the agency shall withhold the records, and the requester may file an action in superior court to obtain an order that the requested records are not trade secrets and are subject to disclosure;

(35) Data, records, or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of, or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented;

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(36) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity, until such information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This paragraph shall apply to, but shall not be limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works;

(37) Any record that would not be subject to disclosure, or the disclosure of which would jeopardize the receipt of federal funds, under 20 U.S.C. Section 1232g or its implementing regulations;

(38) Unless otherwise provided by law, records consisting of questions, scoring keys, and other materials constituting a test that derives value from being unknown to the test taker prior to administration which is to be administered by an agency, including, but not limited to, any public school, any unit of the Board of Regents of the University System of Georgia, any public technical school, the State Board of Education, the Office of Student Achievement, the Professional Standards Commission, or a local school system, if reasonable measures are taken by the owner of the test to protect security and confidentiality; provided, however, that the State Board of Education may establish procedures whereby a person may view, but not copy, such records if viewing will not, in the judgment of the board, affect the result of administration of such test. These limitations shall not be interpreted by any court of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics;

(39) Records disclosing the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Community Health, the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity;

(40) Any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to weapons carry licenses, or pursuant to any other requirement for maintaining records relative to the possession of firearms, except to the extent that such

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records relating to licensing and possession of firearms are sought by law enforcement agencies or a judge of the probate court as provided by law;

(41) Records containing communications subject to the attorney-client privilege recognized by state law; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further, that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to the attorney-client privilege. Attorney-client communications, however, may be obtained in a proceeding under Code Section 50-18-73 to prove justification or lack thereof in refusing disclosure of documents under this Code section provided the judge of the court in which such proceeding is pending shall first determine by an in camera examination that such disclosure would be relevant on that issue. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

(42) Confidential attorney work product; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further, that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to confidentiality as attorney work product. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

(43) Records containing tax matters or tax information that is confidential under state or federal law;

(44) Records consisting of any computer program or computer software used or maintained in the course of operation of a public office or agency; provided, however, that data generated,

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kept, or received by an agency shall be subject to inspection and copying as provided in this article;

(45) Records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer liability insurance or self-insurance coverage to any agency;

(46) Documents maintained by any agency, as such term is defined in subparagraph (a)(1)(A) of Code Section 50-14-1, which pertain to an economic development project until the economic development project is secured by binding commitment, provided that any such documents shall be disclosed upon proper request after a binding commitment has been secured or the project has been terminated. No later than five business days after the Department of Economic Development secures a binding commitment and the department has committed the use of state funds from the OneGeorgia Authority or funds from Regional Economic Business Assistance for the project pursuant to Code Section 50-8-8, or other provisions of law, the Department of Economic Development shall give notice that a binding commitment has been reached by posting on its website notice of the project in conjunction with a copy of the Department of Economic Development's records documenting the bidding commitment made in connection with the project and the negotiation relating thereto and by publishing notice of the project and participating parties in the legal organ of each county in which the economic development project is to be located. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business;

(47) Records related to a training program operated under the authority of Article 3 of Chapter 4 of Title 20 disclosing an economic development project prior to a binding commitment having been secured, relating to job applicants, or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business;

(48) Records that are expressly exempt from public inspection pursuant to Code Section 47-20-87;

(49) Data, records, or information acquired by the Commissioner of Labor or the Department of Labor as part of any investigation required pursuant to Code Section 39-2-18, relating to minors employed as actors or performers; or

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(50) Held by the Georgia Superior Court Clerks' Cooperative Authority or any other public or private entity for and on behalf of a clerk of superior court; provided, however, that such records may be obtained from a clerk of superior court unless otherwise exempted from disclosure.

(b) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.

(c)(1) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case.

(2) Except as provided in subsection (d) of this Code section, in the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following:

(A) A photograph;

(B) A photocopy;

(C) A facsimile; or

(D) Another reproduction.

(3) The provisions of this article regarding fees for production of a record, including, but not limited to, subsections (c) and (d) of Code Section 50-18-71, shall apply to exhibits produced according to this subsection.

(d) Any physical evidence that is used as an exhibit in a criminal or civil trial to show or support an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 shall not be open to public inspection except by court order. If the judge approves inspection of such physical evidence, the judge shall designate, in writing, the facility owned or operated by an agency of the state or local government where such physical evidence may be inspected. If the judge permits inspection, such property or material shall not be photographed, copied, or reproduced by any means. Any person who violates the provisions of this subsection shall be guilty of a felony and,

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## Appendix B: Georgia's Library Laws

upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years, a fine of not more than \$100,000.00, or both.

*Current through the 2017 Regular Session*

**Title 50. State Government**  
**Chapter 18. State Printing and Documents**  
**Article 4. Inspection of Public Records**  
**O.C.G.A. § 50-18-73. Actions to enforce provisions**

(a) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. In addition, the Attorney General shall have authority to bring such actions in his or her discretion as may be appropriate to enforce compliance with this article and to seek either civil or criminal penalties or both.

(b) In any action brought to enforce the provisions of this chapter in which the court determines that either party acted without substantial justification either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of such decision.

*Current through the 2017 Regular Session*

**Title 50. State Government**  
**Chapter 18. State Printing and Documents**  
**Article 4. Inspection of Public Records**  
**O.C.G.A. § 50-18-74. Penalties**

(a) Any person or entity knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article, by knowingly

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## Appendix B: Georgia's Library Laws

and willingly failing or refusing to provide access to such records within the time limits set forth in this article, or by knowingly and willingly frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00 for the first violation. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this article against any person who negligently violates the terms of this article in an amount not to exceed \$1,000.00 for the first violation. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions. In addition, persons or entities that destroy records for the purpose of preventing their disclosure under this article may be subject to prosecution under Code Section 45-11-1.

(b) A prosecution under this Code section may only be commenced by issuance of a citation in the same manner as an arrest warrant for a peace officer pursuant to Code Section 17-4-40; such citation shall be personally served upon the accused. The defendant shall not be arrested prior to the time of trial, except that a defendant who fails to appear for arraignment or trial may thereafter be arrested pursuant to a bench warrant and required to post a bond for his or her future appearance.

*Current through the 2017 Regular Session*