

Writing A Library Behavior Code: an Update

Key Resources

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November 18, 2010

Indecent Exposure (California)

Calif. Penal Code § 314 <http://www.leginfo.ca.gov/calaw.html>

“Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby...”

Breastfeeding Laws

<http://www.ncsl.org/default.aspx?tabid=14389>

All 50 states updated September 2010

Dress Code and Bare feet court cases

Kreimer v. Bureau of Police, 958 F.2d 1242 (3d Cir. N.J. 1992)(library policy “shirt or other covering of their upper bodies” upheld by court).

Armstrong v. D.C. Public Library, 154 F. Supp. 2d 67 (D.C. 2001)(library policy: “objectionable - barefooted, bare-chested, body odor, filthy clothing, etc.” overturned by court).

Neinast v. Board of Trustees of the Columbus Metro. Library (2006), 165 Ohio App. 3d 211, *appeal denied*, 109 Ohio St. 3d 1506, 849 N.E.2d 1027; See also *Neinast v. Board of Trustees of the Columbus Metro (OH). Library*, 346 F.3d 585 (6th Cir. 2003); *cert. den.* 541 U.S. 990 (2004) (library policy against bare feet upheld by court).

Illicit Sexual Activity in Public Places

Calif. Penal Code § 547(a) Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: (a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

Center for Problem-Oriented Policing – Problem Specific Guides - Guide #33

<http://www.popcenter.org/problems/> (see full list; many guides useful for libraries)

Offensive Speech

Cohen v. California, 403 U.S. 15 (1971)(overturned conviction of man wearing jacket saying F*\$% the Draft in a Los Angeles courthouse. The Government may not make distinctions in individual taste and style).

Hunt v Hillsborough County jury instruction #7 (May 2010)(based on *Brown v. Louisiana*, 383 U.S. 131 (1966))("A library is a place dedicated to knowledge, and to beauty. It is a legitimate government interest to preserve a library as a sanctuary for reading, writing and quiet contemplation. To preserve that legitimate interest, the right to free speech in a library is subject to restriction. The right to receive information is not unfettered and may give way to significant countervailing interests.") <http://tinyurl.com/juryinstruction>

United States v. Kokinda, 497 U.S. 720 (1990)(plurality)(post office sidewalk intended only for traffic was not a public forum; reasonable to prohibit solicitors).

International Society for Krishna Consciousness of California v Los Angeles, 48 Cal.4th 446 (2010)(okay to ban solicitations of money, not literature distribution); see also *Los Angeles Alliance for Survival v. City of Los Angeles* (2000) 22 Cal.4th 352 (2000)(upholding ordinance prohibiting aggressive panhandling).

Sex Offenders in the Library

John Doe v. City of Albuquerque, Case No.08cv1041MCA/LG dockets.justia.com/docket/circuit-courts/ca10/10-2102/ (City cannot ban sex offenders from library entirely, but may limit)(Case is currently on appeal; RSS feed available) Albuquerque's Amended Instruction Regarding Registered Sex Offenders in Public Libraries May 7, 2010 <http://tinyurl.com/27kz3z9>

Iowa Code (692A.113) 1. A sex offender who has been convicted of a sex offense against a minor shall not do any of the following: (f) Be present upon the real property of a public library without the written permission of the library administrator.

Civility

College Republicans at San Francisco State Univ. v Reed, 523 F. Supp. 2d 1005 (2007)(speech code requiring students to "be civil to one another" found unconstitutional); *Kreimer v. Bureau of Police*, 958 F.2d 1242 (3d Cir. N.J. 1992)

(Library rules that: "Patrons shall respect the rights of other patrons and shall not harass or annoy others through noisy or boisterous activities, by staring at another person with the intent to annoy that person, by following another person about the building with the intent to annoy that person, by playing audio equipment so that others can hear it, by singing or talking to others or in monologues, or by behaving in a manner which reasonably can be expected to disturb other persons. 6. Patrons

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shall not interfere with the use of the Library by other patrons, or interfere with Library employees' performance of their duties" upheld).

Restrooms and Gender Identity

Transgender Law & Policy Institute – U.S. jurisdictions with laws prohibiting discrimination on the basis of gender identity or expression <http://tinyurl.com/transgender-discrimination>

San Francisco Human Rights Commission, Compliance Guidelines to Prohibit Gender Identity Discrimination (2003) <http://tinyurl.com/SF-genderguidelines>

Patrons with Disabilities – Rights

New regulations, including new definitions of service animals (must be dogs or in some cases, miniature horses)

Revised ADA Regulations Implementing Title II (state and local government) and Title III (public accommodations and commercial facilities) <http://www.ada.gov/regs2010/ADAregs2010.htm>

CFR 28 § 35.104 Definitions

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability.

Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

CFR 28 § 35.136 Service animals

- (a) *General.* Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.
- (b) *Exceptions.* A public entity may ask an individual with a disability to remove a service animal from the premises if—
 - (1) The animal is out of control and the animal's handler does not take effective action to control it; or

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- (2) The animal is not housebroken.
- (c) *If an animal is properly excluded.* If a public entity properly excludes a service animal under § 35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.
- (d) *Animal under handler's control.* A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).
- (e) *Care or supervision.* A public entity is not responsible for the care or supervision of a service animal.
- (f) *Inquiries.* A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).
- (g) *Access to areas of a public entity.* Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.
- (h) *Surcharges.* A public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.
- (i) Miniature horses.
- (1) Reasonable modifications. A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.
- (2) Assessment factors. In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public entity shall consider—
- (i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
 - (ii) Whether the handler has sufficient control of the miniature horse;
 - (iii) Whether the miniature horse is housebroken; and
 - (iv) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.
- (C) Other requirements. Paragraphs 35.136 (c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

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