

Writing a Library Behavior Code - an Update

Writing a Library Behavior Code: an Update



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Legal Disclaimer

- Legal information
- **Not** legal advice!



Agenda



- F**ree Speech
tread carefully
- E**qual Protection
- N**otice
- D**ue Process (Appeals)

FEND off lawsuits

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Writing a Library Behavior Code - an Update

Can Library Enforce Rules ?

- Tobacco
- Dress codes
- Solicitation
- Sex Offenders
- Civility



Court rules sex offender library ban unconstitutional

Behavior restrictions

Library **may** set reasonable rules related to mission

No bathing or sleeping

Speech restrictions

CAUTION

Analyze space

See attorney

Is limited public forum created?

Best: Time, Place, Manner restrictions



Tobacco in the Library

Medicinal marijuana?

Chewing tobacco?

Spitting in general?



Behavior. Library may set reasonable policy. Apply evenly.

Cal. Gov. Code § 19994.30 et seq. smoke-free in all enclosed public buildings and within 20 feet exits and windows; other states <http://tinyurl.com/smokefreepc>

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Dress Codes

Teens in pajama bottoms and slippers?
Plumbers crack?
Pants below the crotch?
Woman accidentally exposing more than a little?



California Law:
willfully and lewdly expose private parts in public place

*misdemeanor or felony

Cal. Penal Code § 314 Indecent Exposure

Library Loses Dress Code Lawsuit

Court rejects library policy:
"objectionable (barefooted, bare-chested, body odor, filthy clothing, etc.)"

Public libraries are different from stores

Public library is "quintessential locus of the receipt of information"

-Armstrong v. D.C. Public Library, 154 F. Supp. 2d 67 (D.C. 2001)

... but Court upheld another library policy:
"shirt or other covering of upper bodies"

(more precise)

Kreimer v. Bureau of Police, 958 F.2d 1242 (3d Cir. N.J. 1992)

Recommendation: rely on legal standards or get legal advice!



Photo by Dennis Kruyt Nov. 9 2008 <http://www.flickr.com/photos/pharantagon/3036694523/in/photostream/>

Safety Issue: Courts upheld policy against bare feet



incident reports
... semen, needles on floor

Photo by Dennis Kruyt Nov. 9 2008 <http://www.flickr.com/photos/pharantagon/3036694523/in/photostream/>

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)

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Remember: California Law Protects Breastfeeding

a mother may breastfeed her child in any public location

Calif. Civil Code § 43.3



www.californiabreastfeeding.org/Laws.html

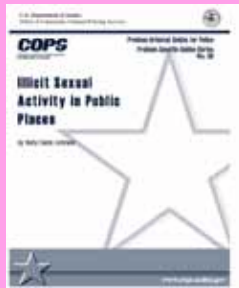
Other states: <http://tinyurl.com/breastfeediaws>

Patrons Getting Smoochy

Clearly behavior.

Library may make reasonable rules.

Enforce evenly.



Cal. Penal Code § 647(a) Lewd Conduct

www.popcenter.org/problems/

T-shirts with bad language



F*\$% the Draft

Jacket worn in Los Angeles Courthouse
Man arrested for disturbing the peace

Supreme Court:

"one man's vulgarity is another's lyric"

Government cannot make distinctions in individual taste and style

Cohen v. California, 403 U.S. 15 (1971)

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Soliciting: Sales, Petitions

Solicitation/advertising in the Library

e.g. handing out leaflets for social events like the local theater company, community center, church

Selling candy for the high school across the street fundraiser (same kids you see outside the supermarket)

Is there a difference between giving information and selling products?



ANSWER:

It depends – look at **where and how** and **check with local regulations**



Reading Room - Sanctuary

JURY INSTRUCTION NO. 7

A library is a place dedicated to quiet, 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 in a library is not absolute and may give way to significant countervailing interests.

Clearly Ok to restrict in library reading room

Courts look at **purpose** of space

Hunt v Hillsborough County <http://tinyurl.com/juryinstruction>
jury instruction May 12, 2010

See also *Brown v Louisiana*, 383 U.S. 131 (1966)

Library Grounds – nonpublic forum?

Grounds merely a path to library?

Ok to ban all types of solicitation

but don't ban based on viewpoint e.g. "pro-life" "pro-choice"



Photo by by [Sharon Evans](#) for Library Development @ Washington State Library
April 12, 2010 www.flickr.com/photos/wsl-4bdev/451783405/

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)

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Library Grounds –public forum?

Are grounds open for public expression?

If so, stronger legal justification to restrict money solicitation than literature distribution



“Time, Place and Manner”

Photo by Fibonacci Blue July 28, 2010
www.flickr.com/photos/fibonacciblue/4839266590/in/photostream/

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 Library

Looking up skirts?



Call police

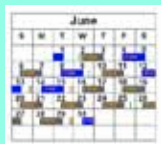


No behavior?

See court case

Sex Offender sued when kept out of library... and won

First Amendment right to the library; cannot ban based on sex offender status; may be able to *limit* access to certain hours



New Mexico federal court (2010)(*now on appeal*):

Note: Iowa law: sex offenders need library administrator's permission to use library

Chapter 692A of Subtitle 1 of Title 16 of the Code of Iowa (2009)

John Doe v. City of Albuquerque, Case No. [10-2102](http://dockets.justia.com/docket/circuit-courts/ca10/10-2102/) (RSS feed available) Albuquerque's Amended Instruction Regarding Registered Sex Offenders in Public Libraries May 7, 2010 <http://tinyurl.com/27kz3z9>

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Civility

- Patron profanity, racist comments?
- Following, staring?

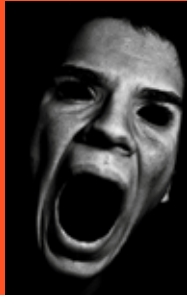


Photo by Joaquin Villaverde Photography
July 30, 2010 (photos/soampified/4845509230/)

Civility

- Profanity, racist, sexist comments?
Best to focus on **LOUDNESS** and behavior rather than content
- Following, staring?
Library policy against staring with "intent to annoy" upheld by court

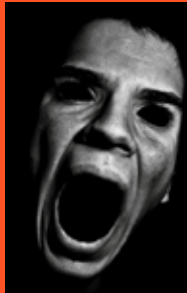


Photo by Joaquin Villaverde Photography
July 30, 2010 (photos/soampified/4845509230/)

College Republicans at San Francisco State Univ. v Reed, 523 F. Supp. 2d 1005 (2007)(campus civility speech code found unconstitutional); Kreimer v. Bureau of Police, 958 F.2d 1242 (3d Cir. N.J. 1992)(staring policy upheld)



Free Speech (tread carefully)
EQUAL PROTECTION
Notice
Due Process (Appeals)

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**New Laws effective March 16, 2011
Patrons with Disabilities**

**Revised ADA Regulations
Implementing Title II and Title III**

On Friday, July 23, 2010, Attorney General Eric Holder signed final regulations revising the Department's ADA regulations, including its ADA Standards for Accessible Design. The official text was published in the Federal Register on September 16, 2010.

The revised regulations amend the Department's Title II regulation, 28 C.F.R. Part 36, and the Title III regulation, 28 C.F.R. Part 36, Appendix A. Each regulation includes a section by section analysis of the rule and information to public comments on the proposed rule. Appendix B to the Title II regulation discusses major changes to the ADA Standards for Accessible Design and applies to public programs required on the proposed rule. The Department's Title III regulation, Appendix C, will be posted on this page as soon as it is available.

These final rules will take effect March 16, 2011. Consistent with the 2010 Standards for Accessible Design, it is permitted as of September 16, 2010, but not required until March 16, 2011. The Department has prepared key sheets identifying the major changes to the rules.

[Title II Final Rule amending 28 CFR Part 36, Non-discrimination on the Basis of Disability in State and Local Government Activities \(28CFR\) \(2010\)](#), as published in the Federal Register September 16, 2010.

[Revised Final Title II Regulation with integrated text](#). The revised Title II regulation implements the Department's new regulatory provisions with the text of the existing Title II regulation that was unchanged by the 2010 amendments.

[Revised Final Title III Regulation with integrated and stand-in-a-hand content](#).

[Title III Final Rule amending 28 CFR Part 36, Non-discrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities \(28CFR\) \(2010\)](#), as published in the Federal Register September 16, 2010.

Public libraries and schools - Title II
Private libraries and schools - Title III

**New Laws effective March 16, 2011
Patrons with Disabilities**



www.ada.gov/regs2010/ADAREgs2010.htm

or go to **ada.gov** home page

Service Animals
Dogs and Miniature Horses

Must permit service animals in all public areas, unless

- out of control
- not housebroken



Library not responsible for care of animal

Library may *not* ask about disability or certification of animal
Library may ask (if not apparent):

- Is animal required because of disability?
- What task is animal trained to perform?

28 CFR § 35.136 Service animals


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Library Questions

Severely disabled adult at children's storytime?
Special needs adults regularly taking over teen tables?

Law:
May not discriminate based on disability unless can show fundamental alteration of program
May impose legitimate safety requirements based on actual risks, **not mere speculation, stereotypes**



28 CFR § 35.130(b)(7) and (h) General prohibitions against discrimination
<http://tinyurl.com/ADA-new-regs>

Restrooms and Gender Identity

San Francisco:
Right to use restroom of user's gender identity



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

For your jurisdiction:
<http://tinyurl.com/transgender-discrimination>



Free Speech (tread carefully)
Equal Protection
NOTICE
DUE PROCESS
(Appeals)

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Notice

Our trustees just approved a patron behavior policy.

- Lobby bulletin board
- Website

Enough notice?

Answer: Ask jury of your users

Notice

We give each patron a handout with rules when they receive their library card plus briefly review it.



Notice of Due Process

We regret to inform you:

*Second violation

14 days prohibition beginning ____ ending ____

*Third violation

6 months beginning ____ ending ____

To appeal, send written request...


Check with attorney



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Summary



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- E**qual Protection
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- D**ue Process (Appeals)

FEND off lawsuits

Questions?





Thanks for listening!

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LibraryLaw.com

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