

Library Codes of Conduct: Patron Discipline and the Constitution

In order to protect the rights of all of their patrons and to ensure that patron usage of the library is compatible with the nature of a public library, libraries appropriately can and should adopt patron codes of conduct.

Patron codes of conduct, however, are constrained by Constitutional Law principles. This is because patron access to the library implicates the First Amendment right to receive information. This right has been held to include a right to access a public library.

In this context, public libraries have been held to be “limited public fora”, and have a constitutional duty to allow patrons to exercise such rights as are consistent with that designation. Libraries may, however, issue “content neutral” regulations, that limit protected First Amendment activities if those regulations are narrowly tailored to serve a significant governmental interest. The interests served by codes of conduct—to protect all patrons’ rights and to make sure that exercise of those rights are compatible with one another—have been viewed as significant governmental interests.

So, libraries can have patron codes of conduct. The focus of this article is not on the behavior regulated by those codes of conduct, but rather on how those codes of conduct can be enforced by public libraries.

The right to access a public library is not absolute, and can be lost for engaging in conduct inconsistent with the purpose of the public library and prohibited under an applicable code of conduct. Most of the constitutional restrictions on enforcement revolve around expulsion or withdrawal of library access privileges. These penalties implicates the core constitutional right to access the library. Because of this, a protected liberty interest is implicated, and a constitutional requirement for procedural due process applies.

Procedural due process means that adequate procedures must be in place prior to library action which deprives a person of a “liberty interest” such as the right to access a public library. However, the concept of due process is flexible and can be adapted to the demands of a particular situation.

At a minimum, however, library disciplinary procedures should involve at least the following elements:

1. A patron whose rights are to be affected is entitled to be heard at a meaningful time and in a meaningful way.
2. In order for the patron to enjoy the right to be heard, the patron is entitled to be notified of the infraction, and this notice must be timely and adequate so that the patron understands the charge.
3. Normally, a hearing will be pre-deprivation (i.e., before a patron loses a library privilege or is expelled from the library), but can be post-deprivation if immediate action on the part of the library is necessary due to an ongoing threat to the operation of the library, or a continuing danger to the health or safety of the patron or others.
4. The patron has a right to an impartial decision maker.

The first requirement, that a patron is entitled to be heard, means that a patron should have an opportunity to present his or her side of the story. If a patron insists, the patron should have a right to bring legal counsel with him or her to the hearing.

Notice given to the patron must be sufficient to apprise him or her of the alleged infraction, whether at the hearing, or as part of the notice, the patron must also understand the factual basis (i.e., the evidence) which forms the basis for the alleged infraction.

While in the normal case the patron would have an opportunity for a hearing before being denied a library privilege, in exceptional cases the hearing can be held post-deprivation. If a hearing is held post-deprivation, it should be held as soon as possible.

Finally, the library decision maker must be seen to be impartial. That does not mean that the decision maker should be someone other than an employee or official of the library—but the final decision maker should not be someone with a personal interest in the decision (for example, the library employee who may have been threatened by a patron, or a library employee against whom the patron makes counter-charges).

Libraries may, but are not required to, have an internal appeal mechanism from the initial determination. In addition, Ohio Revised Code Section 2506.01 permits an appeal to the Court of Common Pleas from any final order or decision of the library or its board of trustees that determines any rights, duties, privileges, benefits or legal relationships of a patron. Because the library would be required to file with the Court of Common Pleas the original papers, evidence offered, heard and taken into consideration in issuing an order or a decision under the code of conduct, libraries should retain such materials so that they will be available in the event a court appeal is filed.

Thus, libraries can and should adopt codes of conduct that regulate the use of the public library facilities. Library patrons, however, have a constitutional right to procedural due process in the event any library privileges will be forfeited or suspended as a result of enforcement of a code of conduct. In crafting their codes of conduct and their enforcement procedures, libraries should keep the principles outlined in this discussion in mind so as to afford their patrons the requisite procedural due process owed the patrons under Constitutional Law principles.

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