Five Policies that Every Michigan Library Should Have in Place

Anne M. Seurynck

Foster Swift Municipal Law News

November 7, 2018

AUTHORS/ CONTRIBUTORS

Anne M. Seurynck

PRACTICE AREAS

Library Law

Municipal & Public Entity Law

Municipal Litigation

Libraries across Michigan, and across the country, are tasked with striking a tricky balance: ensuring that citizens' constitutionally-protected rights to use library resources are protected, while creating a safe, orderly and non-disruptive environment for patrons and staff. In order to accomplish this, a library's governing authority must put in place reasonable and appropriate restrictions and policies.

There are countless policies that a library could put in place, but there are five policies that are most critical to helping a library achieve its mission. These include:

1. Patron Behavior Policies

2. Meeting Room Policies

3. Internet Use Policies

4. Privacy Policies

5. Media Policies

Why Policies are Important?

Publicly supported library services are a function of government. Therefore, a library's actions and activities must comply with and are subject to scrutiny under various laws, including state and local statutes and constitutional standards. For example, courts have recognized a First Amendment right to receive information in a public library. But such a right is not unfettered. A library's policies should define those instances—guided by statutory and case law—when someone's access to the library may be restricted.

In particular, a library's governing authority may impose reasonable restrictions on the time, place, and manner of library access. Courts have found "time, place, and manner" regulations are permitted if they are narrowly tailored to serve a significant governmental interest and leave open ample channels for communication. These types of regulations govern behaviors, not particular groups of people. Alternatively, libraries can enact "substantive" regulations (such as

prohibiting religious organizations from using library meeting rooms), but such policies are subject to a much stricter standard of review. Accordingly, libraries should focus their policy-making in the realm of time, place, and manner restrictions whenever possible.

Patron Behavior Policies

Patron behavior policies are among the most important, and most frequently implicated, policies that libraries can enact. Libraries are public places but patron conduct may, and should, be regulated in a library building and on its grounds. Such policies should clearly address specific conduct that may result in the suspension of library privileges. The more specifically the prohibited behavior is described, the greater the likelihood its enforcement will be upheld. And, remember, when crafting policies, make sure to regulate the time, place, and manner of various behaviors, not the groups of people who may engage in them. These patron behavior policies may include:

- Violations of law

- Engaging in improper library activities

- Misuse of restrooms

- Harassment, staring, photographing, stalking, or otherwise engaging in a manner that can be reasonably expected to disturb staff and patrons

- Interference with staff's performance of duties

- Improperly accessing staff-only areas

- Use of library staff phones and computers

- Installing tables, signs, or structures on library property

- Loud noise

- Body odor that causes a nuisance

- Unauthorized use of library (such as re-entering after suspension)

Meeting Room Policies

Many libraries provide access to meeting rooms to the public, so it's important to have policies in place to regulate their use. Again, make sure these policies are focused on time, place, and manner. If a library does not want to permit certain activities in its meeting rooms—for example, private parties—then it should prohibit all, not some, people and groups from using meeting rooms for that purpose. In other words, focus on how the room is being used, not who is using it.

When crafting meeting room policies, consider addressing limitations on the manner in which rooms may be used. For example, may a group distribute and leave behind materials? Are food and beverages allowed? Who is responsible for setting up and cleaning up? Will fees be charged?

Thinking through these issues, and having clear policies in place, will help ensure that library meeting rooms will be used for their intended purposes.

Internet Use Policies

Determining how to make the Internet available to patrons—and when to take it away—is one of the thornier, and most important, policy issues that libraries face.

First, libraries must take into account their responsibilities as they relate to Internet usage under applicable statutory law. Specifically, libraries must consider their Internet policies in light of Michigan Public Act 212 ("PA 212") and the Children's Internet Protection Act ("CIPA"), a federal law passed in 2000 meant to address concerns about children's access to obscene or harmful content over the Internet.

PA 212 applies broadly to libraries in Michigan—essentially it applies to any library that offers use of the Internet or computer, computer program, computer network, or computer system to the public. If PA 212 is implicated, the statute dictates that a library governing body must adopt and require enforcement of a policy that restricts Internet and computer access by minors.

There are two ways that libraries can comply with PA 212.

1. A library must make one or more terminals available that restrict receipt of obscene or sexually explicit materials that are harmful to minors. However, a library must also reserve, to minors 18 years or younger who are accompanied by a parent or guardian, one or more terminals that are not restricted.

2. Alternatively, a library may utilize a system that is designed to prevent minors from viewing obscene or sexually explicit materials. Such systems may include using privacy screens, employing staff monitoring, and/or creating adult-only labs.

CIPA applies if a library receives federal funds under the Library Services and Technology Act and "E-Rate" discounts on filtering computers in schools and libraries. To the extent that CIPA applies, a library must filter all computers (even those of staff members). One significant difference between PA 212 and CIPA is that under CIPA a 17-year old is not considered a minor.

Privacy Policies

Michigan libraries should also craft policies that address privacy issues related to "library records" as defined under the Michigan Library Privacy Act (the "Privacy Act"). Under the Privacy Act, a library record is defined as:

"A document, record, or other form of information that contains information that personally identifies a library patron, including name, address or phone number, or that identifies a person as having requested or obtained specific materials from a library."

Examples of such records include but are not limited to:

- Internet history
- Surveillance tapes
- Circulation records

These and other documents must be taken into account when a library is creating privacy policies related to the circumstances under which such records may be reviewed. An effective policy should treat different classes of documents differently depending on the source of authority from which a request to review a record derives. Such sources of authority include:

- The Freedom of Information Act

- State and local law enforcement

- Federal law and the Patriot Act

Privacy policies should spell out clearly the manner in which requests for information are to be reviewed, and the means by which such requests must be made—for example, pursuant to a court order.

Media Policies

As a public forum, it's likely that at some point every library in Michigan will experience an event or circumstance which will generate media inquiry. Accordingly, it's important that libraries have media policies in place to address how media is to be handled in such situations.

A media policy is particularly critical in times of crisis, when media scrutiny is high. In such scenarios, a policy that clearly deals with issues such as who the library spokesperson is, and under what circumstances photos or video can be taken, can help a library effectively respond to the situation.

There are a couple of important issues to keep in mind when creating and enforcing a media policy. The first is to make sure that the policy doesn't run afoul of the Michigan Open Meetings Act. For example, while a library may have a general prohibition against videotaping, videotaping cannot be prohibited during what would be considered an open meeting.

Conclusion

Running a library in Michigan and doing so in a way that serves the interests of patrons and staff while remaining compliant with local, state, and federal laws is a complex endeavor. Having clear, thoughtful guidelines in place that have been crafted with the help of experienced legal counsel is an important step for any library governing body to take.

If you have any questions, or need help crafting effective library policies, contact Anne Seurynck at 616.726.2240 or at aseurynck@fosterswift.com.