

LEGALLY ENFORCEABLE POLICIES

FOUR TESTS FOR A LEGALLY-ENFORCEABLE LIBRARY POLICY

Public library trustees are responsible for adopting policies to govern use of the library and personnel concerns. Public library policies are enforceable only if they are in writing and adopted formally by the library board in an open meeting. In addition, these policies will be valid only if they meet the four tests of legality, reasonableness, nondiscriminatory application, and measurability. Policies which do not meet these tests could be ruled invalid if challenged in court. Prior to adopting a new policy or when reviewing a current policy, a library board should ask the following questions to test the policy for legal enforceability:

1. **Does the Policy Comply with Current Statutes?** The library board should review the policy to determine whether any provisions would be illegal under state or federal law. For example, a library policy of “no animals or pets allowed” must provide an exception for seeing eye dogs and other support animals. It is not legal for a library to refuse entry to people accompanied by licensed support animals.
2. **Is the Policy Reasonable (including reasonable penalties)?** Some policies, although not illegal per se, could still be ruled invalid because they are unreasonable. For example, state laws usually authorize the library’s governing board to adopt regulations or citizens’ access to the library, which includes setting hours the library is open to the public. Let’s say a library board decides to set the library’s hours as “10:00 a.m. to 11:30 a.m. Monday through Friday.” Although it would not be *illegal* to set such hours, a court could find the policy to be *unreasonable* because in effect it denies library access to citizens who work or go to school during the day.

The library board should also examine proposed policies to determine if any penalties are unreasonable. For example, it would be reasonable for a “no skateboarding in the library” policy to include a “penalty” that violators would be asked to leave for the rest of the day. It would not be reasonable to penalize the skateboarding patrons by banning them from the library “for the rest of their lives.”

3. **Could There Be Discriminatory Application of the Policy?** In order to be legally enforceable, library policies must be applied fairly to all patrons. Courts will invalidate library policies which are not applied equally to all patrons and are used to discriminate against certain groups of patrons. For example, a “no sleeping” policy might be enforced against homeless patrons but not against other patrons (such as the mayor or even a library board member) who drift off while reading in a comfy chair. Some libraries might have “no noise” policies which they enforce only against tables of giggling adolescents but never against tables of loud-speaking adults.

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4. **Is the Policy Measurable?** It is difficult, if not impossible, to enforce a policy fairly if the policy and penalty are not quantifiable. Policies should be written clearly so that library board members, library staff, and library patrons can read a library policy and know what constitutes a “violation” of the policy. For example, if a library has a policy which states that patrons will lose their borrowing privileges if they have “too many overdue books for too long,” the definitions of “too many” and “too long” are not clear and may result in unfair application when interpreted by different staff members. On the other hand, a quantifiable policy states that patrons will lose their borrowing privileges if they have “library material which has been overdue for three weeks or longer and if the patron has not returned the material or paid the replacement cost or made arrangements with the library for payment.” The policy also provides that the penalty, “loss of borrowing privileges,” will continue until the material is returned and/or paid for.

When reviewing and rewriting existing policies, library boards should also ask themselves whether there is still a viable reason to have the policy in the first place. Some boards have eliminated long-standing policies which have outlived their original usefulness to the public library and have opted instead for a more positive image for the library in the community. These include policies such as overdue fines, rental fees, and restrictions of number of materials borrowed at one time.

Source: Adapted from Ruth Dukelow, *Library of Michigan Access*, September-October, 1994.