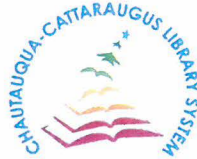


# Hooray for MORE Freedom!

Privacy, Confidentiality & Intellectual Freedom  
In the Public Library



STLS  
Southern Tier Library System  
Connecting Community Libraries

## Rights of Minors

### SUMMARY

One important role of the library in a functioning democracy is supporting the exploration, growth, and development of young minds. Access to library materials by Child and Teen patrons is thus protected by the law. It is the responsibility of the parent to place any limitations on a child's access to library materials and resources; the library cannot act in place of the absent parent. Minors have a right to confidentiality, even though parents are responsible for the fines of their children. Minors have a right to intellectual freedom; the library's role is to facilitate parent-child dialogue while providing access, *not* to make decisions on content.

### POLICY ACTIVITY

Rights of minors plays a role in multiple policies. Create a paragraph for each of the following policies affirming the rights of child and teen patrons in your library.

1. Confidentiality of Patron Records

Do confidentiality laws name an age at which a patron's right to confidentiality begin? Do parents have a right to know what their child is reading/viewing?

2. Patron Behavior/Code of Conduct

Do the same rules that apply to adults apply to children? How and when are parents involved?

3. Circulation

Can a child check out books and DVDs intended for an adult audience if the parent is not in the building? What if the parent is in the building but not with the child?

4. Internet Use policy

Can a child use the internet without the permission of a parent? What online materials are they allowed to access?

5. Unattended Child Policy

If a child is unattended, can the library act as parent in making decisions about what material the child is accessing?

### POLICY CONSIDERATIONS

The statutes and case law fall firmly on the side of the intellectual freedom of minors. It is considered an important part of a working democracy that young people have an opportunity to develop their ideas and beliefs free of control by the government or other institutions outside of the family.

When creating a policy, DO:

- Affirm that confidentiality, privacy, and intellectual freedom apply to all ages.
- Be clear with parents when they sign that library card application form that they are agreeing to be responsible for fines, they are not given access to their child's records
- Be clear that library staff cannot act *in loco parentis*.

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When creating policies that affect minors, DON'T:

- Put the library in a position to make subjective judgments on content
- Trust rating systems to make decisions on child access

## PROCEDURE ACTIVITY

Create a Procedure for Unattended Child/ Unattended Child at Closing.

Create a Minor Registration Procedure that includes notifying parent of the Child's rights to confidentiality.

Create a step by step procedure for dealing with a parent's request of their child's records.

## STATUTES

§4509. Library records. Library records, which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to records related to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audio-visual materials, films or records, shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court order or where otherwise required by statute.

## CASE LAW

### **Rights of Minors to access violent games**

*American Amusement Machine v. Kendrick* 2001

Judge Richard Posner: "Violence has always been and remains a central interest of humankind and a recurrent, even obsessive theme of culture both high and low. It engages the interest of children from an early age, as anyone familiar with the classic fairy tales collected by Grimm, Andersen, and Perrault are aware. To shield children right up to the age of 18 from exposure to violent descriptions and images would not only be quixotic, but deforming; it would leave them unequipped to cope with the world as we know it."

### **Children's exposure to nudity**

*Erznoznik v. City of Jacksonville* 1975

Jacksonville had an ordinance that prohibited the showing of films containing nudity if the film was visible from a public area.

In a 6-3 decision, the Court struck down the Jacksonville ordinance. While individuals did have a right to not be exposed to offensive films, the ordinance singled out "some kinds of speech on the ground that they are more offensive than others," Justice Lewis F. Powell, Jr. wrote for the majority. Since the "offended viewer readily can avert his eyes" from the films shown, Jacksonville's distinction between films with nudity and films without nudity was unconstitutional. Under *Police Dept. of Chicago v. Mosley*, "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." The ordinance was "broader than permissible" in trying to protect children from exposure to nudity and "invalid" as an attempt to prevent traffic accidents. [<https://www.oyez.org/cases/1974/73-1942>]

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## ALA GUIDANCE (Excerpts)

### **Library Bill of Rights**

(<http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/intfreedom/librarybill/lbor.pdf>)

The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.

V. A person's right to use a library should not be denied or abridged because of origin, **age**, background, or views.

### **Access to Library Resources and Services for Minors: An Interpretation of the Library Bill of Rights**

(<http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/access-library-resources-for-minors>)

Library policies and procedures that effectively deny minors equal and equitable access to all library resources available to other users violate the Library Bill of Rights. The American Library Association opposes all attempts to restrict access to library services, materials, and facilities based on the age of library users.

Libraries should not limit the selection and development of library resources simply because minors will have access to them. Institutional self-censorship diminishes the credibility of the library in the community, and restricts access for all library users.

Children and young adults unquestionably possess First Amendment rights, including the right to receive information in the library. Constitutionally protected speech cannot be suppressed solely to protect children or young adults from ideas or images a legislative body believes to be unsuitable for them.<sup>1</sup> Librarians and library governing bodies should not resort to age restrictions in an effort to avoid actual or anticipated objections, because only a court of law can determine whether material is not constitutionally protected.

The mission, goals, and objectives of libraries cannot authorize librarians or library governing bodies to assume, abrogate, or overrule the rights and responsibilities of parents. As "Libraries: An American Value" states, "We affirm the responsibility and the right of all parents and guardians to guide their own children's use of the library and its resources and services." Librarians and governing bodies should maintain that parents—and only parents—have the right and the responsibility to restrict the access of their children—and only their children—to library resources. Parents who do not want their children to have access to certain library services, materials, or facilities should so advise their children. Librarians and library governing bodies cannot assume the role of parents or the functions of parental authority in the private relationship between parent and child.

Lack of access to information can be harmful to minors. Librarians and library governing bodies have a public and professional obligation to ensure that all members of the community they serve have free, equal, and equitable access to the entire range of library resources regardless of content, approach, format, or amount of detail. This principle of library service applies equally to all users, minors as well

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as adults. Librarians and library governing bodies must uphold this principle in order to provide adequate and effective service to minors.

## **Minors and Internet Activity: An Interpretation of the Library Bill of Rights**

(<http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/minors-internet-activity>)

The digital environment offers opportunities for accessing, creating, and sharing information. The rights of minors to retrieve, interact with, and create information posted on the Internet in schools and libraries are extensions of their First Amendment rights. (See also other Interpretations of the American Library Association's Library Bill of Rights, including "Access to Digital Information, Services, and Networks," "Access to Library Resources and Services for Minors.")

Personal interactions of minors can be enhanced by social tools available through the Internet. Social networking websites allow the creation of online communities that feature an open exchange of information in various forms, such as images, videos, blog posts, and discussions about common interests.

As defenders of intellectual freedom and the First Amendment, libraries and librarians have a responsibility to offer unrestricted access to Internet interactivity in accordance with local, state, and federal laws, and to advocate for greater access where it is abridged. School and library professionals should work closely with young people to help them learn skills and attitudes that will prepare them to be responsible, effective and productive communicators in a free society.

Adopted July 15, 2009, by the ALA Council; amended on July 1, 2014.

## **ALA Q&A on Privacy and Confidentiality (excerpt)**

(<http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/qa-privacy>)

IV. Minors' Privacy Rights: 32. Are privacy rights of minors the same as those of adults? What information about a minor's use of the library should be kept confidential and what may be released to parents?

The rights of minors vary from state to state. In particular, a minor's right to keep his or her library records private will be governed by a state's library confidentiality statute. Libraries may wish to consult the legal counsel of their governing authorities to ensure that policy and practice are in accord with applicable law. In addition, the legal responsibilities and standing of library staff in regard to minor patrons differ substantially in school and public libraries.

In public libraries, parental responsibility is key to a minor's use of the library. Notifying parents about the library's privacy and confidentiality policies should be a part of the process of issuing library cards to minors. In some public libraries, the privacy rights of minors may differ slightly from those of adults, often in proportion to the age of the minor. The legitimate concerns for the safety of children in a public place can be addressed without unnecessary invasion of minors' privacy while using the library.

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## SAMPLE POLICIES

The following is sample language from policies with special considerations for minors:

### **Confidentiality of Patron Records:**

“Families” as part of Confidentiality Policy from South Country Library

(<http://wordpress.sctylib.org/wp-content/uploads/2014/07/Library-Patron-Confidentiality.pdf>)

Children have the same rights under this law as adults. Their records can only be accessed through the library card. Signing a minor's card only shows acceptance of fines and fees; it does not exempt you from New York law. Patrons who do not want their children's records to remain private should check out their children's items on their own cards.

### **Patron Behavior:**

“Child Behavior and Supervision” as part of Behavior and Environment Policy from Gloversville Public Library (<http://www.librarytrustees.org/policies.php?job=viewpolicy&policyid=212>)

The Library Board and staff are eager for children to use the Library and welcome those who do so. Service to children is an important part of the Library's mission. The Library is free and open to unaccompanied children who are independent enough to use the resources for recreation, information and education.

Parents should be aware, however, that the Library is a public building open to all individuals. It is not the Library staff's function or purpose to provide supervision or to care for children while parents, guardians or caregivers are outside the Library. Staff will not monitor children leaving the Library.

Children through age six must have a parent, guardian, or caregiver in their immediate vicinity. An exception is made for children attending a library program such as chaperoned class visit.

Caregivers are expected to be aware of the opening and closing times of the Library, bearing in mind that these can and do change. Furthermore, power failures or other emergencies can occur and may require unexpected closing of the building. Since children left alone outside the Library could be vulnerable, every effort will be made to contact the parent, guardian, or caregiver prior to closing. If, however, a child is left at the Library after closing time or as the result of an emergency closing, the police will be called. Under no circumstances will a staff member take a child out of the building or transport children to another location.

Children ages seven through 17 may use the library on their own. They are, however, expected to adhere to the same standards of conduct expected of adults. All Library users are required to respect Library property and to act in a manner appropriate to the use and function of the Library. Children who do not use the Library appropriately or who require excessive staff attention or supervision will be informed of the rules. If inappropriate behavior continues, the child will be asked to leave the building and the parent, guardian, or caregiver will be contacted. If necessary, the police will be contacted.

