



## "Ready for the Challenge: Legal Measures" 21-Point Checklist

Presented at by Stephanie Cole Adams at:  
*Protect The Right To Read: Neutrality, Challenges, and Censorship*  
Thursday, December 7, 2023 1:00 – 4:00 P.M.  
A Western New York Library Resources Council Webinar

**Purpose:** This checklist sets out the basic elements required to be ready for challenges to library materials, programming, and operational decisions. It will also assist allies (lawyers, accountants, security, municipal allies, law enforcement, friends, etc.) to help your library if it becomes the target of aggressive criticism.

Key phrases this presentation will use:

**Collection Management (or "Development") Policy:** the board-approved policy by which library materials are selected, purchased, catalogued, and removed.

**Materials Challenge:** an objection (formal or informal) to materials in a public library's collection per that public library's collection management or development policy.

**Programming Challenge:** an objection (formal or informal) to a library-sponsored event.

**Policy Challenge:** an objection to a library policy, either as applied, or as written.

**Aggressive Criticism:** Criticism that does not merely use formal or informal communication to register a concern but uses language and actions (and maybe social media) to heighten tension or drama.

**Person Recording in the Library:** A person recording or streaming in the library. Sometimes, a sub-set of such people self-dubbed "First Amendment Auditors" will use aggressive tactics to try to provoke adrenalized reactions by employees.

**FOIL:** New York State's Freedom of Information Law. A law enabling access to many government records, including the records of non-association public libraries.

**OML:** New York State's Open Meetings Law. A law prescribing procedures for public bodies, including public libraries, to conduct meetings.

**Harassment:** Annoying or aggressive conduct extreme enough to violate the New York State Penal Law (see definitions below). NOTE: "Harassment" in this context is not to be confused with 'sexual harassment' or other harassment based on a protected category of identity, although the two can occur at the same time).

**Disorderly Conduct:** Disruptive or aggressive conduct extreme enough to violate the Penal Law (see definitions below).

**Abuse:** Physical or verbal aggression that can be the basis of either a Harassment or Disorderly Conduct or other criminal charge.

**Threat:** An expression of hostile intent that can be the basis of either a Harassment or Disorderly Conduct or other criminal charge.

**Unacceptable Challenge or Criticism Conduct ("UCCC"):** Abuse, threats, harassment, and disorderly conduct directed at library employees, volunteers, trustees are NOT protected speech and should be addressed immediately as unacceptable conduct.

**Backup:** Additional people, not usually working for the library, who may be called in to assist with a Challenge or Unacceptable Challenge Conduct. Examples include: a HR specialist who will check in with employees feeling stressed and targeted, an attorney reviewing documentation to ensure compliance, a security specialist conducting a Threat Assessment.

**Threat Assessment:** A violence prevention strategy that involves: (a) identifying threats to commit a violent act, (b) determining the seriousness of the threat, and (c) developing intervention plans that protect potential victims and address the underlying problem or conflict that stimulated the threatening behavior.

#	Checkpoint	Reason
<b>PREPARATION</b>		
1	Have a copy of your library's charter (and, if relevant, enabling legislation) handy.	The type of library and elements of the charter can impact your library's preparation and response, and Backup helping with preparation or response will need to refer to it.
2	Have a copy of your bylaws handy.	The "rules" your board operates by can impact your library's preparation and response, and Backup helping with preparation or response will need to refer to them.
3	Have a survey or map of your library's exact premises handy.	The boundaries of the property your library owns, leases, or occupies are important to know; the rights of every person involved in a Challenge or Aggressive Criticism can shift based on these boundaries, so it is important to know them.
4	Have a copy of the Library's Code of Conduct handy.	Behavior that crosses the line into UCCC must be addressed under the Code of Conduct.
5	Have a copy of the Library's FOIL Policy handy and know who the Records Access Officer and FOIL Appeal Officer are.	More and more public libraries are being asked for records per FOIL. A policy and designated personnel to reply to requests are essential to compliance.
6	Have a copy of the Library's Collection Management (or "Development") Policy handy.	Materials Challenges will be addressed per this policy.
7	Have a copy of the Library's Programming Policy handy.	Programming Challenges will be addressed per this policy.

8	Have a copy of the Library's policies and procedures regarding room use handy.	While any library policy can become the focus of criticism, room use (or "facility use") policies are currently also a focus of attention.
9	Double-check that all meetings follow the requirements of the recently updates to the OML.	All chartered libraries in New York State are required to follow the OML. Critics of a library may look to see if a board is following all the requirements (such as allowing recording during meetings).
10	Adopt a "Recording in the Library" policy that fits the needs of your unique library.	Libraries are places where, by law, users have an expectation of privacy. Designating certain areas within the library as free from recording during normal hours is well within the rights of every type of library. At the same time, creating spaces where recording and streaming are the norm is okay, too.
11	To the degree possible, train all front-line employees and volunteers on the information listed in this checklist, and give them time to practice de-escalation.	This type of training should be given a few times a year, since de-escalation, calm response, and following policy/protocol takes repetition.
12	By policy or protocol, know who will respond to media inquiries about a situation, and who generates and authorizes statements on behalf of the library.	Policies and protocols of this type vary greatly; what's important is that the approach selected is realistic and works for your library.
13	Confer with local law enforcement about how they would address UCCC.	This is important to do in advance, since the desire of a library to use law enforcement, and the response of the agency, will vary wildly. The fact is, while de-escalation is always preferable, some extreme behaviors will call for a law enforcement response. By conferring in advance, a library can work through mission and response-related concerns.
14	Know your Backup.	In addition to law enforcement, maintain good connections to professionals and allies who will be ready to help when there is a Challenge, Aggressive Criticism, or UCCC. Ensure you are on the same page as them about Intellectual Freedom, your library's commitment to equal access, and how it addresses Aggressive Criticism and UCCC.
<b>RESPONSE</b>		
15	Safety first: if at any point there is a threat to safety, call in qualified Backup to assess the threat, and take appropriate action.	Threat Assessment can only be done by those trained to do it (law enforcement or security professionals).

---

16	Remember: while their motivations may not be aligned with your library's mission, people bringing challenges have a civil right to do so, even if the action turns into Aggressive Criticism. At the same time, remember that UCCC is UNACCEPTABLE.	At all times, it is important to remember library policy and accord with respect those expressing criticism. At the same time, criticism that turns into UCCC is unacceptable, and leadership must be ready to spot the difference and take appropriate action. This is a good time to use Backup (a library system leader, an HR professional, a lawyer).
17	When subjected to Aggressive Criticism or UCCC, use the tools of the trade.	Research as much as possible.
18	Call in Backup as needed.	The possible need for Backup is a good reason to have a contingency budget.
19	When Aggressive Criticism or UCCC happens, check in with those impacted.	Always remember that before anything else, people matter. Checking it with employees, volunteers, trustees, and others impacted by Aggressive Criticism and UCCC is essential.
<b>AFTER</b>		
20	After Aggressive Criticism/UCCC and all responses are over, take the time to review and "hot wash."	A "hot wash" is an after-action assessment of how things went, so a library can identify anything that might help the library do better in the future.
21	Be ready for your library's fans and critics to review this checklist and both use it and learn from it.	<p>Vigilant public oversight and questioning of public institutions is a fine tradition in New York State, and the law supports people who are using the OML, FOIL, and other mechanisms for accountability and transparency.</p> <p>Just as important is remembering that any abuse, threats, disorderly conduct, harassment, and failure to abide by library policy are UNACCEPTABLE and no person—and certainly not library boards—should tolerate them as tools of accountability and transparency.</p>

---

## **§ 240.26. Harassment in the second degree**

---

A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or
2. He or she follows a person in or about a public place or places; or
3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

Subdivisions two and three of this section shall not apply to activities regulated by the national labor relations act, as amended, the railway labor act, as amended, or the federal employment labor management act, as amended.

Harassment in the second degree is a violation.

## **§ 240.20. Disorderly conduct.**

---

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or
2. He makes unreasonable noise; or
3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
5. He obstructs vehicular or pedestrian traffic; or
6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.

Disorderly conduct is a violation.