

School Administrators vs. Student Privacy

By Mitchell A. Tyner

Parochial school administrators have recently read of students' objections to everything from a locker search to compulsory urinalysis for drugs as an 'unwarranted search and seizure' that violates the Fourth Amendment to the U.S. Constitution. Not uncommonly, student challenges to such actions are upheld in court. Could it happen in your school? Possibly, but not on constitutional grounds.

Constitutional guarantees apply only to actions by governmental agencies, not private organizations. So while a warrantless search may be illegal in a public school, it is legal in a private school. But that doesn't mean the student doesn't have a case.

Both common law and the statutes of most states recognize invasion of privacy as grounds for legal action. While the specific requirements may vary from state to state, they generally require that the

intrusion must be offensive or objectionable to a reasonable person. Furthermore, the action taken must invade an area in which a person is entitled to privacy. Does the search of a locker or dormitory room violate the criteria? Probably. An urinalysis almost certainly qualifies as an invasion of privacy.

But that doesn't mean that you have to call the sheriff to get a search warrant if you have reason to believe a student possesses contraband. You can still conduct the search by using the primary defense to a charge of invasion of privacy. If the person has previously consented to be searched, he has no basis for legal action.

The consent should be in written form, preferably included in the contract signed by the student and or the parents. It should state that students may not possess certain types of goods and substances (i.e., drugs, alcohol, tobacco, pornography), that all areas under the

student's control are subject to random search, and that any forbidden items found may be confiscated. Specific penalties for possession of contraband should be included.

Beware, though—even a valid consent can be misused. Students and parents may sue school officials for invasion of privacy over strip searches and other extreme measures, especially against minors. Such actions may be deemed "outrageous conduct" even when contractual permission has been obtained. But a properly worded contract, judiciously enforced, affords school administrators the ability to perform the searches that they find increasingly necessary. □

Mitchell Tyner is Associate Director and Legal Counsel for the Public Affairs and Religious Liberty Department of the General Conference of SDA, Washington, D.C.