



Negligence and Students' Personnel Administration

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ABSTRACT

Student personnel administration in higher education has been a source of concern of late and the students form an integral part of this activity. Effective administration of student personnel plays a vital role in repositioning education in Nigeria. Based on that fact, this paper focuses on negligence and students' personnel administration. Its identify and clarify the law of negligence, how it operates within a school environment and offer suggestions as to how litigation can be avoided or at least the potential for such an action reduced. The paper also state the different types of negligence, aspect of negligence in school, element of negligence as well as the implication of negligence to students personnel administrators.

*Received 01 July, 2023; Revised 10 July, 2023; Accepted 12 July, 2023 © The author(s) 2023.
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I. Introduction

Admission of students places on the schools the responsibility for providing the students the necessary services that will bring about the actualization of the educational objectives, which the nation has set out to achieve. At the secondary school level, these services are in the academic and non-academic areas. The academic services constitute the curricular programmes, while the non-academic services constitute the student personnel services programme of the school.

Student personnel administration in this context, refers to all the nonacademic services rendered to the students at the school setting outside the formal classroom instruction, for the purpose of healthy physical, emotional, social and moral development as part of their preparation for a responsible and productive adult life. These services are complementary to the academic programme in making for a holistic and balanced education of the students. While the task of intellectual and skill development can be accomplished through curriculum planning and implementation, the task of developing responsible attitudes and morals can only be achieved through the provision and administration of student personnel services. Although student personnel administration has received very little attention in professional literature and school administration, Duffy (1990), observe that it is an administrative task area that is critical to the effective operation of any school system. This assertion is also affirmed by Ndu, Ocho and Okeke (1997) when they stress that in addition to curriculum implementation, school administrators have a duty to provide adequate student personnel services in their respective schools as the both services are complementary to each other.

Some goals of education as spelt out by the Federal Republic of Nigeria (2004) in the National Policy on Education demand services that are beyond classroom instruction for their actualization. An example of such a goal is the inculcation of national values (p.8). The values include respect for the worth and dignity of the individual, faith in man's ability to make rational decisions, moral and spiritual principle in interpersonal and human relations and promotion of the physical, emotional and psychological development of all children.

It is in realization of the symbiotic role of the curricular and co-curricular services in the realization of educational objectives at the secondary school level, that the Federal Republic of Nigeria (2002) in the National Minimum Standard prescribes mandatory student personnel services that school administration should make available to students in tandem with the curricular offerings. Services that come under student personnel services are many and varied. They include registration and orientation of students, enrolment management, guidance and counselling services and health care services. Others are social and recreational services, disciplinary services municipal services such as potable water, conveniences, catering services and dormitory accommodation. Also included are periodic evaluation of students' character and learning, participation in school governance, special education services and participation in school clubs and societies. The above

identification of the student personnel administrations are congruent with the views of Ezeocha (2017) and Mgbodile (2017) on what constitutes the services. Ezeocha went on to describe the services to be all the activities and services that are rendered to students for the achievement of the educational objectives which are not the normal classroom instruction. According to Mgbodile (2017) student personnel services refers to all the activities of the principal, teachers and other members geared towards making the pupils better citizens of the society in which they live.

Educational sector is guided by policies that ensure proper management of the school in term of staff, students' welfare, development and implementation of curriculum content, provision of proper guidance, school community relations, discipline and proper keeping of school records etc. The responsibilities of co-ordinating these activities form the basis for the appointment of school administrators. However, the administrators' ability to discharge these official duties effectively depends largely not only on understanding of organizational principles and ability to maximize resources but also on awareness of basic legal ingredients or interests that guides each administrative responsibility.

The roles of school administrators in the management of the school system remain very strategic and fundamental for the achievement of the pre-determined goals and objectives. For instance, the principal as the administrative head often make pertinent decisions as it affects day-to-day activities in the school system. In spite of the multifarious roles of the principals, student personnel management has become inevitable with the intent that individual has their legal rights to be guided and protected. The principal plays strategic roles hence seen as web of students' personnel administration. The principal is vested with the powers to discuss matter affecting students' shortcomings and orally advise them to improve based on the school rule and regulations. Also, the responsibilities of the students' personnel administrators are always placed on the values of educational

Moreover, litigation is becoming more prevalent in all areas of society and education is no exception. Professionals generally are being held more accountable for their actions. Parents and students are more aware of their rights and it would seem by the increase in litigation more willing to pursue those rights through the process of litigation to recover compensation. A legal cause of action may arise in many instances. Litigation may follow breaches of the Education Act, negligence, breach of contract, defamation, assault and an emerging area of educational negligence.

Negligence in terms of physical injury suffered by students is only one aspect of litigation, which a teacher may face. Nevertheless, it is suggested that it is the most likely reason a teacher will face legal action. It is therefore of great importance that teachers and school authorities are aware of how the law of negligence operates and what is acceptable and unacceptable practice.

Cotton (1995) writes that while students' personnel administrator have some basic knowledge of negligence most are unaware of how the law operates and the liability of teachers. As litigation increases within the education sector and society in general it is the responsibility of students' personnel administrators, not only in an effort to reduce the risk of harm to students by a greater awareness of potential hazards but also by a knowledge of how the law of negligence operates.

The purpose of the paper is to identify and clarify the law of negligence, how it operates within a school environment and offer suggestions as to how litigation can be avoided or at least the potential for such an action reduced.

Concept of Students Personnel Administration

Student personnel management is a very important aspect of the school system. Student personnel management provides facilities and the prevailing atmosphere which enables the realization of human potential and uniqueness on the basis of emotional combinations which allows for maximum sensory experience

Student personnel administration, according to Akuchie (2018), are those services and functions that complement classroom instruction for the total development of the individual. The services emphasize the intellectual, social, emotional, cultural and physical development of the individual and equally help to build the curriculum, improve methods of instruction, and develop programmes. Students' personnel services are tools in guiding and directing students to improve their personal substance in the pursuit of their careers. The provision of these services is therefore meant to meet the different aspects of human development and adjustment (Francis, 2015). The general objectives of student personnel services are to assist students to attain maximum self-realization, become effective in their social environment, and complement the academic programme of the institution. Specifically student personnel services seek to provide orientation for students to facilitate adjustment to campus life, perform individual inventory and testing to aid towards self-knowledge and self realization, perform individual and group counselling, provide placement and follow-up services, provide adequate assistance to students on finance, health, food, and housing, provide variety of co-curricular activities, approve and monitor activities of recognized student organizations, implement students code of conduct and recommend the appropriate disciplinary action to the proper school authorities.

Importance of Student personnel administration

According to Obi (2018), the following are importance of student personnel administration:

1. Help in voidance of students' conflict
2. Ensures monitoring of students' activities and organization
3. Ensures students disciplinary measure
4. Encouraged students to ignore the conflicting issues for peace to be in the school.
5. Enable students be afraid of pursuing a matter against the school authority but instead seek for leniency.
6. Enable financial assistant to be given to the student
7. Provide functional facilities/equipment
8. Transportation services and library services are adequate.
9. Enhance provision of school facilities and recruitment of staff
10. Allowed room to meet privately for settlement of their conflicts.

Student personnel administration refers to all the activities and services that are rendered to students by school and its staff, outside the normal classroom instructions for the achievement of the educational objectives. Student personnel administration embraces those services to student that support regular classroom instruction. Student personnel administration can be described as all the activities of the administrator, teachers and other staff members geared towards making the students better citizens of the society in which they live. It comprises all those administrative and supervisory functions and service, other than classroom instruction, that affects the welfare of the Students. Student personnel administration as an important part of school administration includes all that a school does to know and understand its students, and to help them know and understand themselves. This is true because students are not equally endowed as there exists individual differences among students due to many factors. For instance, among the student body, the star, the isolates, the rejected, the mutual pairs, and the chains and cliques.

Concept of Negligence

Negligence is a failure to exercise appropriate and/or ethical ruled care expected to be exercised amongst specified circumstances. The area of tort law known as negligence involves harm caused by failing to act as a form of carelessness possibly with extenuating circumstances. The core concept of negligence is that people should exercise reasonable care in their actions, by taking account of the potential harm that they might foreseeably cause to other people or property. Negligence according to Fuller (2017) is the failure of an individual to act according to standards of conduct that encompass the full range of his duty. If the individual fails to meet these standards, acts carelessly, and injures the rights or causes physical, economic, or psychological harm to another person in the process, the law requires the individual at fault to compensate the injured party. Negligence is also when someone that is responsible for another person's care, acts in a way that can or has resulted in harm. Negligence is when duty of care is not executed correctly, this is considered negligence, and the victim may be entitled to take legal action (Nakpodia, 2017).

It is crucial to distinguish intentional torts caused on purpose from negligence caused by unintentional but careless behaviour. In order to prove negligence in tort law, the court needs to establish the presence of 5 key elements. The 5 elements of negligence include:

- Did the individual at fault owe a duty to the injured party?
- Was there a breach of said duty?
- Was the breach also the cause of the legal injury?
- What was the proximate cause? (could the harm caused be anticipated)
- What was the extent of the damage caused?

To have a strong case for proving negligence, all five elements need to be met.

In order to be more proficient in spotting acts of negligence, there is a need to go more in-depth and explore the different types of negligence recognized by the law.

Types of Negligence

1. Comparative Negligence

In the case of comparative negligence, the plaintiff (i.e., the injured party suing the defendant), is partially responsible for the harm done to himself. Depending on the percentage of involvement, the plaintiff might or might not get compensated for the damage done. It's also worth mentioning that this depends on the location where the act of negligence was done. Some states are considered as pure comparative fault states, meaning the plaintiff can be compensated even if their involvement in the accident is more than 50%. Other states use a different, modified interpretation of comparative negligence and require that the plaintiff's responsibility is less than 50% in order to be eligible for compensation.

2. Contributory Negligence

Where comparative negligence allows for compensation even if the plaintiff was partially responsible for his or her injuries, contributory negligence does not. In the case of contributory negligence, the plaintiff will not be eligible for compensation, even if their involvement was 1%.

3. Vicarious Liability

Vicarious liability is a unique type of negligence due to the fact that an individual or a company can be held accountable on the basis of negligence even though they are not directly responsible. In these cases, the defendant is responsible for another person's action (i.e., an employee or an underage child) and is, therefore, liable for the act of negligence. Another example of vicarious liability is when a dog owner is held accountable for the damage done by their pet.

4. Gross Negligence

Gross negligence is the most serious type of negligence and involves such reckless behavior that no reasonable person would ever commit it. Personal injury lawsuits involving gross negligence are most common in cases where there have been seriously violent actions or in medical malpractice cases where the defendant acted without any lack of concert for the patient and their wellbeing.

Houghteling (2015) defines negligence as the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable or prudent man would not do. Schools and their employees are not automatically responsible for every injury that may occur within the school. In order to be held liable for negligence, the following four questions must be answered in the affirmative:

1. Did the defendant owe a duty to the plaintiff?
2. Did the defendant breach that duty?
3. Was the plaintiff injured?
4. Was the breach the proximate cause of the injuries?

Further, there can be no defenses to the action. Generally speaking, to recover damages, it must be shown that the defendant owes a duty to the injured person, that the behavior fell short of that required, that this caused a real injury to the person, and that the injured person was not responsible for causing the injury.

Aspects of Negligence in School

There are two aspects to negligence in schools.

1. The negligence of teachers to students.

Teachers have a duty of care to students to provide adequate supervision. This may occur in the playground, on the sports field, in the classroom or on an excursion. Under the doctrine of vicarious liability the school authority may be liable to pay the plaintiff for the negligence of teachers. It does not however, negate the personal liability of the teacher.

2. The negligence of school authorities.

Negligence of school authorities may arise where the grounds or equipment are unsafe and a student is injured. School authorities have a non-delegable duty to students to ensure that reasonable care is taken for the safety of children at school.

Elements of Negligence

The element of negligence include the following

1. Duty

Duty of care is the first element of negligence and is concerned with relationships between people. In other words a person must take reasonable care to avoid acts or omissions which would be likely to injury another person where it is foreseeable that such an injury could occur given the circumstances. A duty of care arises out of the relationship between the student and the students' personnel administrators and is well established in education regulations and at common law. The relationship between teachers and students imposes a duty of care on teachers. This duty is not absolute and only extends to protection from harm where the risk of injury is reasonably foreseeable. The higher the risk or potential for danger the greater the duty imposed on the students' personnel administrators. The reason underlying the imposition [of a duty of care] would appear to be the need of a child of immature age for protection against the conduct of others, or indeed of himself which may cause him injury coupled with the fact that, during school hours the child is beyond the control and protection of his parent and is placed under the control of the students' personnel administrators who is in a position to exercise over him and afford him in the exercise of reasonable care, protection from injury.

There is a duty of due care that the law recognizes one person owes to another. This duty may arise from a contract, a statute, common sense, or a special relationship the parties have to one another. Regarding students, the courts have found that schools and their employees have the duty to supervise students, provide adequate and appropriate instruction prior to commencing an activity that may pose a risk of harm, and provide

a safe environment. Usually, that duty extends to students while they are in the custody or control of the school. Schools may have a duty to supervise students off school grounds when they have caused them to be there such as while on field trips or extracurricular events.

Schools may have a duty to supervise students on school grounds before and after school when they have caused them to be there, for example, when the bus drops them off. A duty can be extended if a person assumes additional responsibilities, such as assuming the duty to supervise students before and after school. Schools may acquire a duty to supervise when they have, by their previous actions, assumed the duty to supervise at this time such as when some staff has supervised intermittently or consistently before official time to arrive.

Schools also have a duty to warn the students of known dangers even when they do not have a duty to supervise. However, in education, generally no one is automatically responsible for the acts of another. School administrators are not automatically responsible for the negligent acts of teachers. In school situations, usually a plaintiff must find a separate duty on the part of each defendant.

2. Breach of Duty

Once a duty has been established, the injured individual must show that the duty was breached. The duty has been breached when the individual unreasonably fails to carry out the duty. In carrying out duties, one is expected to act as an ordinary, prudent, and reasonable person considering all of the circumstances involved. The court or jury makes a determination of how the reasonable person would have acted; if the individual did less, he or she is found negligent. The standard varies for professionals; for example, a reasonable teacher or principal. Defendants who are professionals will be held to a standard based on the skills or training they should have acquired for that position. Thus, the question to be answered is: What would the reasonable professional have done under the same or similar circumstances? The standard varies also with the individual circumstances of the situation. Each situation gives rise to a unique set of circumstances. Some of the factors which may be considered in determining the standard of care include the following:

- Age and maturity
- Nature of the risk
- Precautions taken to avoid injury
- Environment and context (including characteristics of students, location, physical characteristics, and so forth)
- Type of activity
- Previous practice and experience

In determining negligence, children are not held to the same standard of care as adults; instead their actions must be reasonable for a child of similar age, maturity, intelligence, and experience. Some states further classify children according to a presumption of capabilities. In those states, children under seven are not held responsible for negligence or unreasonable acts. The noted exception, however, is that a child may be held to an adult standard of care when engaged in an adult activity, for example, driving a car or handling a weapon.

3. Injury

The plaintiff must show an actual loss or real damage, for instance a physical bodily injury or a real loss. Compensation may include direct monetary damages for medical expenses, replacement of property, lost wages, and so forth. The plaintiff may recover also for intangible injuries, such as pain and suffering, and emotional distress. In some situations an intangible injury is sufficient for recovery. However, there are states that require at least a physical manifestation of an injury if there are no tangible injuries.

4. Causation

To recover for an injury, the plaintiff must show that the defendant's negligence was the cause of the injury. If the accident would have occurred anyway, there can be no liability. The defendant's negligent act must be a continuous and active force leading up to the actual harm. When there is a lapse of time between the defendant's negligence and the injury, other contributing causes and intervening factors may be the actual cause of the injury. When there is a series of events leading up to an injury, the person starting that chain of events may be liable for the resultant injury if it was a foreseeable result of his negligence. If the injury at the end of the chain of events was not a logical (foreseeable) result of the negligence, there is no liability. When another independent act occurs in between the defendant's negligent act and the plaintiff's injury, it may cut off the liability. In other words, someone else's actions may have been the cause of the injury. Intervening acts will not cut off liability when those intervening acts were foreseeable.

5. Defenses

Once the basic elements have been established, the court looks to the possibility of defenses before a damage award is granted. Defenses vary greatly between states; the most common defenses being governmental immunity, assumption of the risk and comparative or contributory negligence. Therefore negligence of education law makes student personnel services in schools system not only appears to be inadequate but some of the existing ones are dilapidated, and constitute danger to the health of the students and the entire school system. With this the school administrators can appreciate more why students embark on protests and demonstrations about the poor state of these services.

Implications for Students Personnel Administrators

Students' personnel administrators which include education authorities, individual schools and teachers, need to understand the law of negligence and what must be proved against them to at least reduce the potential for successful litigation by plaintiffs. It is worth noting that about 99% of cases are settled out of court. The defendant accepts liability and agrees to pay the compensation conditional on the settlement remaining confidential. It in no way diminishes the fact that someone has been negligent and there may be employment repercussions even though the case was not heard in open court.

What to do if there is an accident

- Follow school policy.
- Document as many details as possible including, how the accident occurred, the nature of the injuries, who administered first aid, whether an ambulance was called, who was present at the time of the accident, the events leading up to and including the incident, what happened subsequently and who was notified.
- The document must be signed and dated and a copy kept. Notes made contemporaneously have been shown to carry greater weight in court than a witness relying on memory. It is worth remembering the time limitations for negligence can be substantial. The quality of the documentation made at the time of the accident may be the difference between a successful defence of a claim and the plaintiff proving their case.
- If a teacher or school authority is sued that matter must only be discussed with the defendant's lawyer. An individual teacher may need his or her own lawyer if there is a conflict of interest between the teacher's liability and that of the school's. It is worth noting that no one wants to accept liability and if they can find someone else to blame they will.

II. Conclusion

It is therefore concluded that principals who understand or aware of education law mitigate most of the crises that would have resulted to legal actions. Thus, as education law and principle has become a binding factor in the management of the school system, the principals have to be more acquainted with implications so that there will be no loopholes for contravening the processes and procedures.

III. Recommendations

Special courses on education law and schools management should be organized by the Ministry of education and State Secondary Education Board, on regular basis for principals of secondary schools in the state. This will improve their managerial skills and create fundamental understanding of the issues that will generate litigations

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