

THE PLACE OF EDUCATION LAW IN THE EFFECTIVE MANAGEMENT OF SCHOOLS

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Abstract

This paper examined the place of education Law in the effective management of schools. The issue of effective management is one of the problems facing schools. Many school managers and teachers have no legal training. As such, they run schools on the basis of trial and error. This trial and error is no longer fashionable. It is because parents, guardians, teachers and students have become litigation conscious. Today, courts actively participate in the management of schools. Those rights and privileges are violated seek redress in the law courts. The paper discussed the meaning of Education Law, content of Education Laws, sources of Education Law and Laws as the basis of school effective management. The paper recommended among others that legal education be made compulsory in school system.

Introduction

The existence of Law is self-evident. This is because law manifests its existence in different spheres of life. We are aware of the fact that law exists in nature, sciences, sports, government, education, administration and school management. But, what is the need for law? Supposedly, it could be said that it's necessity is embedded in it's role in a given situation.

Man by nature is a selfish being. He is moved to action not by reason, but by his desires and passions. If men were to live without any common power over them, there would be a state of war, everyman against everyman, not war in the organized sense but a perpetual struggle of all against all. In a word, the nature of man necessitates laws to maintain social order. Laws are drawn up to ensure that the citizens live together peacefully.

What is Law?

Law is difficult to define. Everybody assumes to know what it means. In the African Encyclopedia, "The Law of a country is a system of rules which all the citizens of that country have to obey". The Oxford Dictionary gives Law as 'rule made by authority for the proper regulation of a community or society for correct conduct of life.

In the words of Obi (2004), Laws means all the official rules governing the action of a society to enable the members of the community to live peacefully and in harmony with each other. It is the written and unwritten body or system or rules derived from custom and formal enactment, which are recognized as binding among those persons

who constitute a community or state, they are imposed upon and enforced among those persons by appropriate sanctions.

Ndu (1997) sees Laws as technical 'commands' which must be obeyed. Such 'commanders' are empowered to make the laws. The people who are now obliged to operate within the laws yield their authority to the executors of the law so that they can exact compliance to the commands. It implies that law is the rule for regulating our mutual co-existence in a society. Our activities are placed under control by the laws.

What is Education Law?

In education, law involves those areas of Jurisprudence which focus on educational principles and practices. This means that education law is established to guide the activities or operations of public and private schools, primary, secondary and tertiary. As a generic term, it covers a wide range of legal subject matter, including the basic fields of contracts, property, torts, constitutional law and other areas of law which directly or indirectly affect the educational and administrative processes of the educational system.

In the words of Obi (2004) as contained in organic education law, it is "any written or positive rule or collection of rules prescribed under the authority of the state or nation; or prescribed or recommended by a body appointed by the government in power to do so on education". If enacted by the legislature or by an Act of the legislature, it becomes known as statute law, but it is called a by-law when it is created by a body in power position as at that particular time like the local government councils.

Education Laws (in Nigeria) generally stipulate the areas in which policies or regulations can be made and executed; and in addition to education edict and regulations emanating from a state bureaucracy which it represents. Some of its good qualities are:

- General rule of conduct.
- Publication of the laws sufficient to subject them to public criticism.
- Minimum reliance on retroactive law, and
- Law within the citizen's capacity for obedience, among others (Obi, 2004).

Education law is important to the school manager and teacher. Every school manager or teacher should as a rule be fully informed of his or her rights and that of others to serve as a guiding principle as he or she discharges his or her duties. Contrary to this, that is, when they do not know their legal and moral obligations to their employers, their colleagues and their students; it can lead to disastrous implications to the individual, the education system and others within the system. Nwagwu (1987) discovered that most teachers are not aware of their rights, duties, obligations and responsibilities and that many others are ignorant of the rule and regulations governing their employment and the school system in which they work. Nwagwu added that most teachers do not know and appreciate the general principles and provisions of law and regulations as they apply in handling issues and discipline in schools.

To ensure efficiency and safe practice, the school manager and teacher should appreciate the importance of maintenance of order through rules, laws and corresponding sanction on deviants. Ndu (1997) states that the laws and regulations equip individual members of the society with the knowledge of their rights and obligations. They also provide a check to possible arbitrator behaviour of leaders who are expected to operate within the rule of law and must, therefore, anticipate the consequences of his action and avoid unnecessary excesses.

Content of Education Laws

Education laws promulgated by the government lay down rules and regulations with minor exceptions in education laws in Nigeria in respect of:

- (a) Management of education indicating the functions, powers and responsibilities of officers and authorities. It provides for establishment of the different boards, agencies, committees and their functions and powers.
- (b) The statutory system of public education showing the official or legal systems of the education as well as their levels and types needed.
- (c) Local education authorities.
- (d) Primary, secondary and tertiary education (if applicable) which stipulates that:
 - (i) Pupils to be educated in accordance with the wishes of their parents;
 - (ii) Provisions relating to race, language, and religion in public institutions;
 - (iii) Secular instruction in public institutions;
 - (iv) General provision for religious instruction in public schools;
 - (v) Curriculum of public schools to include religious worship and instruction;
 - (vi) Religious instruction in voluntary agency institutions;
 - (vii) Religious instruction in community schools;
 - (viii) Pupils excused from attendance at religious worship or instruction;
 - (ix) Certain conditions of attendance not to be required;
 - (x) Registration of pupils in institutions;
 - (xi) Offences;
 - (xii) Power to make regulations;
- (e) Establishment and closure of schools.
- (f) Teachers' registration, appointment, duties, obligation, dismissal etc;
- (g) Inspection of schools and its control.
- (h) Financial provisions.
- (i) Religion, race and curriculum.
- (j) Preliminary issues such as legal interpretation and definition of terms.
- (k) General provisions related to educational practice including the rights and obligations of pupils, parents and the community or state on education, pupils admission, registration, ages and code of conduct.
- (l) Management of government and/or private schools.
- (m) Specific powers and obligations of key officers on the state in education such as the ministers, commissioner permanent secretary, inspectors.
- (n) Supplementary provisions including schedules and sub-sections.
- (o) Other auxiliary matters (Obi, 2004).

Sources of Education Law

Generally, law has three main sources namely; Customary Law, English Law and Statute Law.

Customary Law is a body of rules regulating the life style and value system of a people for the purpose of maintaining law and order, and harmonious coexistence among the people within the indigenous community.

English Law was introduced in Nigeria by the British Colonial policy makers, not to abrogate the customary law, but to preserve as much as possible customary laws that were capable of English notion of Justice. Statute law refers to enacted law or legislation or Act of parliament in a democracy. It includes and encompasses all English Laws.

The sources of law in education in Nigeria include the following;

- a. The constitution.
- b. Legislation.
- c. Judicial precedents or court decisions.
- d. Administrative laws.
- e. School rules and regulations.
- f. Ordinances, policies or regulations of the ministries of education at the federal and state or local levels (Obi; 2004).

(a) The Constitution

The behaviour and processes of a body, government or otherwise is governed by a fixed or fundamental rules and regulation. Every country has its constitution which provides a frame work of law within which orderly governmental processes may operate. It contains the basic structure of the national government and a written set of rules to control the conducts of the government and its agencies. The contents of the constitution are supreme, hence, the constitution is said to be the "Supreme law of the land". As stated in section 1 (1) of 1989 constitution of the Federal Republic of Nigeria, the "Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria," and as in section 1(3), "if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void". Under this 1989 Constitution, Secondary education is left in the hands of the state Government and Primary education in the hands of the Local Government Areas.

(b) Legislation

This is law made by a body constituted for the purpose, that is an enacted law or statute .It gains its meaning statute from the Latin word- "Statum" meaning it is decided showing that statutes are bills voted on and passed into law by the legislature. The purpose could be the National Assembly, State House of Assembly or any such body. To distinguish statute from By-laws, decrees and edicts, we refer to Bye laws as enactment of a local Government Council based on the statute law. If the laws are from

the state level, they are called Edicts while that from the federal level under a military Government are called Decrees. Nigerian public schools are predominantly affected by legislative enactments.

(c) Judicial Precedents or Court Decision

Case laws or judicial laws or the judge made laws are terms used to express judicial opinions on education law. The terms are used to distinguish laws enacted by legislative bodies from rules of law, which are enunciated, by the courts. The rule of "stare decisis" (let the decision stand) is rigidly adhered to by lower courts when decision by higher courts in the same jurisdiction. There are but a few court cases relating to primary and secondary school education, particularly those getting to the supreme court level.

(d) Administrative Laws

These are rules and regulations made and applied by the federal or state regulatory agencies and Commissions such as ministries of Education, Schools Management Board, among others. The state school Boards as a creature of the legislature in most states have only powers delegated or implied in the delegated power; outside this delegated power, the rules and regulations are void. All rules and regulations of the Ministry of Education and schools Boards are presumed to be valid and are as enforceable as a statute enacted by legislature. (Obi, 2004)

Laws as the Basis of School Effective Management

Schools are institutions erected through due legal process. They have legal personality. This means that they can sue and be sued in their names. Simply put, their names are known to law. Schools are established for the purpose of serving the public and must operate within the dictates of the law.

The authorities that manage schools must have to discharge their functions and responsibilities within the provisions of the Rules and Regulations as embodied in the various status and Federal Government Education Laws, Codes, Ordinances, Decrees, and Edicts. In addition, the Local Government Education Authorities which have been charged with the responsibility of managing primary schools are also established by law (Decree No. 3 of 1991). Therefore, all levels of Educational authority should be aware of the legal aspects of Education.

Education a Legal Right of Every Child

Education is a fundamental legal right of every child. In November 29, 1959, the General Assembly of the United Nation adopted the following declaration, among others, as the Rights of children:

- i. The right to special care if there is any handicap.
- ii. The right to enjoy full opportunity for play and recreation.
- iii. The right to develop his abilities,
- iv. The right to learn to be a useful member of the society.
- v. The right to free education.

It was in 1990 that Nigeria endorsed these rights and the 1989 constitutions of the Federal Republic of Nigeria listed the rights as:

1. Right to private life.
2. Right to freedom of thought, conscience and religion.
3. Right to peaceful assembly and association.
4. Right to freedom of movement.
5. Right to freedom from discrimination.
6. Right to life.
7. Right to dignity of human person.
8. Right to personal liberty.
9. Right to fair hearing.

As the school relates to the child, it should recognise and respect these fundamental human rights, which may be abridged only when such rights interfere with the proper education of the child.

Parents Relationship with the School

Views about parents' relationship with the school can be seen from two perspectives:

1. as partners
2. as customers, (Obi, 2004)

Parents as Partners

Parents have been seen as partners in the process of educating the child. Parents under this dispensation, are willing to share the following:

- Sense of purpose
- Mutual respect, and
- Willingness to negotiate

Findings of Maduewesi (2001) suggest-that there is much to be gained from treating parents as partners in the education of their children and the school needs continually to be thinking of ways to this. If majority of parents are keen to help their children to do well in school, this is a resource which teachers would do well to use.

Parents as Customers

Parents are seen as clients buying a service. Much that has been said about parents as partners will be true if parents are seen or see themselves as clients buying a service. In this situation, the school needs to set out very clearly what it is. Parents will want-to get value for their money and the school will need to demonstrate what it is offering and about what the child will gain. Parents are still likely to do all they can to help their children and may expect the school to help them do this.

Alternatively, they may take the view that they are paying the school to educate their children for them. In this case, the school may need to point out that children are learning all the time and those parents make an important contribution to a child's education.

Parents have many opportunities to foster their children's learning and the children are likely to make better progress in school if home and school work together.

The management of schools today no doubt has increasingly become complex. Some of the complexities can be seen in the following areas:-

- Increasing cost of education;
- Explosive student's enrolment;
- Technological influence;
- School-community conflicts;
- Staff and students indiscipline etc. (Igwe, 2003)

Each of the above has the capacity of influencing the school negatively if not well managed. Before the government takeover of schools in 1970, school managers were more effective part of the educational system. They knew the priorities of the school to which attention should be given. They had power and authority over the selection, appointment, promotion and discipline of their teachers and could admit new students through school-organised entrance examination. With the government takeover of schools their power and authority in mentioned areas were eroded. This has negatively affected school's effectiveness.

Chester (2012), schools cannot do the job alone and parents cannot delegate, their responsibility for guiding their children. Many situations would be helped simply by the school knowing of the home circumstances and the parents knowing more of what goes on in this school.

It is essential that parents and teachers agree on good education. It is in realisation of this call for good education of the children that the parents who beget the children have legal rights and responsibilities in respect of the education and upbringing of their children and wards. There is provision for the right of the parents, in the education laws of the various states of the Federation, to sue the public school or any of its employers for the violation of the rights of the child.

Education and Law of Liability

This law has an addition of libel sedition malice, intentions, negligence, etc. In all, the law of negligence is the most relevant. An explanation is that by the law of negligence the school can be legally (whether jointly or individually) held responsible or liable for any injuries or otherwise inflicted on a child during the statutory hours of schooling. (Obi, 2004)

Education and Legal Duties of the School

The legal duties of the school imply that the school should teach and educated the child. This includes the duty of the school to take care of the child's development. This specifically arises out of the contractual obligation of the school as a result of proper admission and registration of the child. It should be taken into cognizance that once a child is properly admitted, there is automatically a contractual relationship between

the school and the child' or the parent/guardian. All the children admitted into the school should be cared for by the school authority because they are entrusted into their care. School can take care of the child through proper pupil personnel administration.

The school which has the obligation to see that the child is educated also has the responsibility to formulate rules and regulations for the proper execution of its duties.

The school authorities have the power under the law to make reasonable rules and regulations governing pupils conduct and may punish pupils for violation of such rules and regulations in a reasonable manner. Reasonable rules would imply those that take into consideration individual rights and responsibilities while reasonable punishment would imply not only the punishment itself but also the procedure and fairness in its application.

Educational Rules and Regulations

Rules and regulations for schools are contained in most State Education Laws or Edicts. The matters covered therein include various forms of school records (admission, progress and withdrawal, time-table, weekly diaries, corporal punishment book), hours of school attendance register, accommodation requirement, punishment, transfer and leaving certificate.

In addition to these rules and regulations, in school matters, school authorities must act in accordance with the provisions of the law of the land or the statutes. Where there are no specific legal provisions, the school rules and regulations will apply.

Therefore, it is necessary to mention that rules and regulations need not be confined to the ones contained in the Education Laws or Edict. It is expected of the School Boards and even school to make their own local rules and regulations, provided that they are not in conflict with the National Constitutions or the State Education Law. This is to say that rules and regulations can be established by the Board of Education, the Local Government Education Authority, the principal or headmaster or even the classroom teacher. It is expected that all rules and regulations must be designed to achieve proper conduct and education, and must be reasonable. Every school authority has the power to establish rules and regulations governing student's behaviours and directed towards the achievement of the objectives of education. Such rules may be in the area of matters relating to the conduct of examination, talking in classes, and absence from classes, lateness, leaving the school without permission, fighting, disobeying instruction, etc.

Rules are better in a written form. However, since it is obvious that every act that can interfere with the orderly conduct of the school cannot be anticipated by the teacher and the administration, it will not be possible to have all the possible rules written down. Some of the rules will emerge as conventions and traditions and a generally acceptable conduct of the school culture. It is necessary, in making rules and

regulations in the school that the authorities act in accordance with the principles to prevent conduct that could interfere with orderly operation of the school or with the rights of other children and in keeping with good moral behaviour. School authority should not make rules on the basis of their personal likes or dislike alone.

The lessons to learn are that for our situation, the evidence of the need for such rules must be established, the statement of the rules must be clear, indicating clearly what constitutes violation.

Recommendations

The laws were to enable the government take proper control of education and all activities connected there with. It is necessary to find out what the law says before a school manager takes any action in discharging his or her functions.

The existence of the laws provides some regulations for the development of the system and also for the curriculum changes. In order to avoid sanctions, the school manager must strive to operate in conformity with such prescriptions. The laws in some sections provided specific utilization procedure of resources in education in each state. The school manager must be aware of and comply with such sections of the law.

Some sections of the laws touch on the powers of the functionaries and agencies. For this purpose, the school manager must be aware that they are holding delegated authority from such functionaries and agencies, and should understand the extent of their freedom of action.

Some of the day-to-day school issues and problems for which school managers need legal and policy information or knowledge about include the following: (Go to pg 36).

Conclusion

In the past and until recently, issues and problems arising from the education sector hardly found their ways into the courts. Educational matters were regarded as highly domestic or localised and the executive authorities were often ready to arbitrate on educational matters even when they involved policies. It was only on matters directly relating to Education Laws of the regions or states that the courts were involved. However, with the increasing politicization of the educational enterprise, with the rising private and public cost of education with the growing complexity of the educational production function and with the increasing awareness of the government and the governed of their constitutional rights and obligations, cases and conflicts arising from the education sector are gradually being referred to the courts for hearing and arbitration.

Recent developments in Nigerian schools tend to support the fact that the educational sector is in closer relationship with the judiciary than before as a result of the increasing wave of litigations on issues that affect the school community. In effect, there are suits and counter suits calling for the attention of the courts and instituted

by the staff, students and management especially in higher institutions of learning and these can be seen in the following;

1. Syllabus and Curriculum: The approved curriculum, copies of regulations for external examinations, sources of specimens and teaching aids etc.
2. The Teachers: Conditions of service, history of each teacher, salaries, conditions of appointment, leave retirement, compensation, death withhold allowances, responsibilities etc.
- (3) School Discipline: Punishments, protest revolts, miscreant behaviour, gangs stealing, fighting, molestation etc.
- (4) Students Progress: Examination, promotion, transfer, admissions, expulsion, school leaving certificates, school prizes etc.
- (5) Religions/Moral Instruction: The constitutional provisions, the types of religion, religious programmes, interference, indoctrination etc.
- (6) External Agencies: School relation with parents, external examining bodies, the publishers, vendors, food sellers, traditional or community heads.

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