

Towards Effective Implementation of in-Loco Parentis in Nigeria Tertiary Institutions

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Abstract

In loco parentis or literally "in the place of the parent" is a legal doctrine that, historically, charged individuals caring for minors (including schools and camps) with the same rights, duties, and obligations possessed by the child's parents — most commonly in the area of discipline or conduct. Is doctrine in loco parentis still a valid principle for engaging the active relationship between tertiary institutions and parents of colleges and university students in the twenty first century? What are the historical antecedents to the current status of care and responsibility of university administrators for students under their watch? Is it worth while to wait for law suits before putting in place measures that safe guard students while in the care of the university? This article examines the doctrine of in loco parentis, (in place of the parents) in its historical context in the United States in comparison with the local Nigerian experience. Eleven recommendations emerge on how best to implement the doctrine in light of legal battles brought against institutions by parents who lose their children to death or sustain serious injuries while under the care of the institution.

Keywords. In loco parentis, university discipline, parental responsibility

Introduction

There are cases that have agitated the doctrine of in-loco parentis in Nigeria, such as the attack of students of Federal Polytechnic Mubi, Adamawa state by unknown gunmen in October 2012 and the abduction of female students of Borno State owned Government Girls' Secondary School, Chibok in 2014 (Tayo, 2014). In such and other similar situation that will be considered later in this paper, there is always the blame game, legal issues and fundamental rights related to in loco parentis.

The doctrine of *in loco parentis* is of particular significance in Nigerian higher education because of the minimum age of 16 for entry into the University system. In other parts of the world such as, Australia, the Adelaide Declaration expects that young people have completed secondary education by age 19. (Rothman & Hillman 2009). In the United Kingdom, the minimum age is stipulated as at least 17 and there are strict rules for students under age 18. The University of Kent published an on line statement that "student and their families should bear in mind that the University of Kent is an adult environment and students are expected to behave like adults and to assume adult responsibilities" (University of Kent on line admission page) Generally in the United States of America, the age of entry is 18. This establishes the fact that universities are expected to be an adult psychosocial environment with doors open to minors in the Nigerian setting.

The courts have defined the students- institution relationship in a variety of ways which have included focusing on in loco parentis and constitution theories. In loco parentis doctrine had been based on the assumption that by sending children [students] to school, parents agree to delegate to school officials, the power or parental authority to control their children's conduct in a manner that will be of the best interest to the child (Alexander, 1980; Aderibigbe, 2012), However, this situation is drastically changing (White, 2007). This concept goes beyond discipline, and depending on the situation on ground may include welfare, security and other issues that affects students and possibly with legal implication on the educational institutions.

Rebirth of in loco parentis

The doctrine of in-loco-parentis which connotes "in place of parents" can be expressed as school managements having some rights and duties of parents. It is recognized that in terms of expressed contract, teachers, tertiary institution staff, or school management have parental responsibilities within and outside the school (Nakpodia, 2012). As stated by Nakpodia (2012), the concept of in-loco-parentis has historically been used by teachers and administrators as a prominent component of the legal and sometimes ethical rationale for the disciplining of students under their charge. It was asserted that normally the courts will not interfere with the authority of a school to create rules that will govern students' behaviour unless such rules are unlawful, unreasonable, and against public policy.

Issues of in loco parentis have been a complex mix of competing rights and responsibilities which involve educational, social, political and judicial systems since the first part of 1800's (Walton, 1993). The doctrine of *in loco parentis* originated in the English common law and recognizes that parent delegate part of their authority to school personnel while the child is in their custody and for purposes consonant to the school setting.

White (2007) stated that, 'During the latter half of the twentieth century, the college-student relationship in the United States was in a state of flux. Student rights have undergone significant changes in

America during the last fifty years. Specifically, the doctrine of *in loco parentis*, which started as a good idea of how to treat college students, was transformed into an outdated dogma against which young people rebelled during the 1960s. This generation eagerly wanted to trade the doctrine of *in loco parentis*, "in place of the parent," for *sine parentibus*, "without parents" (ibid). Since the deterioration of *in loco parentis*, colleges and universities have removed many restrictive controls on students (Hamilton & Lowry, 1997).

However, in recent years, a combination of court decisions and second-guessing by this very same generation has started the slow turn of the *sine parentibus* ship back toward the island of *in loco parentis*. One factor in the transition back towards *in loco parentis* has been the issues or occurrence within tertiary institutions with legal implications (White, 2007). Across history are cases related to *in loco parentis*, and the case between Scott Krueger, a freshman and Massachusetts Institute of Technology (MIT) in the fall of 1997 is very much associated to the doctrine of *in loco parentis*. Krueger was found unconscious in a room at his fraternity after a night of drinking and apparent hazing. The hazing incident allegedly involved members of the fraternity forcing Krueger to consume excessive amounts of alcohol. When he was discovered, his blood alcohol level was 0.40. He later died at Massachusetts General Hospital. Shortly after his death, Krueger's parents sued MIT, alleging that the institution's inadequate alcohol and housing policies played a role in their son's death (Healy, 2000). For several years after Krueger's death, his parents fought against MIT over who was to be held responsible for Scott's death. (Sontag, 2003).

The president, Charles M. Vest, of MIT personally apologized to the Krugers in the year 2000 after the long legal battle and image spoiling publicity, and the University paid \$6million settlement, thereby ending the lawsuit (Healy, 2000). The president's apology to Krueger's parents noted that they have failed and he said, "Despite your trust in MIT, things went terribly awry. At a very personal level, I feel that we at MIT failed you" (Healy, 2000). This case led to changes in some policies of MIT and a new rebirth of *in loco parentis* which other tertiary institutions may have possibly borrowed from.

Due to the Krueger case, MIT changed its housing and fraternity policies. Beginning in the fall of 2002, MIT required all freshmen to live in an on-campus residence hall for the first time in its 137-year history. The institution also provided more intense training for its residence hall staff, and they now pay live in advisors to monitor fraternity and sorority housing. In a nutshell, the Krueger case is important because, it marked the rebirth of the doctrine of *in loco parentis* on the college campuses in the 21st Century (Sontag, 2003).

Campbell (2002) indicated that Parents have not only sued for alcohol related deaths, they have also held universities responsible for students' suicide. In another case, MIT was involved in a lawsuit brought by parents of a student who burned herself to death in her residence hall room after receiving months of counselling from university counselling services.

In addition Forum College also settled a case out of court where it accepted partial responsibility for a student suicide (Hoover, 2003). A student, Michael Frentzel, had what were apparently self-inflicted scratches and bruises on his neck. A dean and counsellor at Ferrum College had Frentzel sign a statement stating that he would not harm himself or anyone else, and then left him alone in his room. While alone in his room, Frentzel hung himself. As part of the settlement with Frentzel's family, the college agreed to improve its counselling and support services (Hoover, 2003).

The 1965, some students were suspended from Des Moines Independent Community School District, Iowa for wearing black armbands as a silent protest against the war in Southeast Asia. The Supreme court ruled in favour of the students saying as long as expression did not disturb the general discipline or endanger the lives of others. Students had a right to free expression. Initially, many significant points were argued in this case including the principal's stand that *in loco parentis* was an integral part of his authority. Justice fortas, speaking for the majority also made a comment that:

"...in the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their view" (Streetlaw, 1969).

Although the original purpose of *in loco parentis* was to protect student rights, that purpose has been significantly undermined by recent amendments and legal issues, and the balance of power has been dramatically shifted from students to their parents, who are ironically part of the same generation that demanded independence during the 1960s (White, 2007). It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school (Hamilton, et al, 2007). In this case, the concept of *in loco parentis* was modified when placed in conflict with the freedom of speech and expression protection.

In Nigeria today, there are emerging social problems across the nation and it affects the fabric of tertiary institutions and the society at large. Thus, it has become imperative to uphold *in-loco parentis* within all levels of education. Legitimately, there is big question about the extent of control, discipline and freedom students should be given, or expected roles of tertiary institutions. There are several cases of where school officials sought to enforce discipline that led to both fatal and disabling injuries to students in the secondary school system in Nigeria. Such include the death of 12 year old Grace Akpan in Calabar Cross River State, the

loss of an eye of Elizabeth Aliri in Imo State (Peretomode, 1992) there was another cited case of a married pregnant student, Magdalene Dappa, who was prevented from writing the West African School Certificate exam in Rivers State. She later took an action against Mr. Nte, the teacher. The presiding High Court judge, in dismissing the case, held that both the school teachers and the principal were agents of the Rivers State Government (Ministry of Education) and not teacher or principal.

It should be pointed out here that it is not always, that any employee can hide under the cloak of “his employer’s responsibility for torts committed by his employee”. If a teacher does something which he is not employed to do at all or specifically prohibited to do, he is not acting in the course of his employment. If a teacher, unauthorized, administers the cane, thus causing serious injury to a child, and if sued, he may wholly be responsible for the damages. Besides, his employers (the School Board) may as well discipline him appropriately for violating the Board’s regulation forbidding teachers to administer corporal punishment.

These are cases which have or can possibly shape the implementation of the doctrine of *in loco parentis* (ibid).

Another case that is worth considering is the Babcock university Ogun state court case about a student (Olakunle Vera Cruz) who drown at a beach in Lagos (Edukugho, 2008). The university claimed that late Olakunle violated the “Duty of Care” and the university’s regulations by leaving the campus on a voluntary club trip without permission, yet the court rule in favour of Vera-Cruz in November 16, 2003 on the ground of guilty of negligence in the unfortunate death by drowning, of Mr. Olakunle Vera-Cruizz, a 100-Level Computer Science student of Babcock University at the Alpha Beach, Lagos on February 18, 2003.

The statement made by Professor Ayandiji Aina of Babcock University revealed that the university took the painful step to put the record straight. He said, “As a close-knit, intimate and inter-dependent community, we believe that life is too sacred and precious to become a commodity for haggling and cross bargaining. For the Babcock family, whatever touches one touches all” (Nation Archive, 2007).

Purpose and implementation of in loco parentis in tertiary institutions

Though there are issues of who are in charge to protect the student when outside the university community. According to Hamilton & Lowry (1997), the concept of *in loco parentis* can help put things straight and upheld that the law can be viewed as a *modus operandi* of instilling values in society at large, and is sometimes a vehicle for social change. Often times, legal involvement to enact change are seen as last resort when individuals or school management are trying to seek results. **As stated by the Michigan Daily, (2002) the** current excessively litigious society has created an environment where universities could once again intrude in students affairs.

Parents and students have also sought legal relief when they felt that the university did not do enough in protecting students. These instances can be used to understand how the law (*in loco parentis*) has become involved in the university's role in the development of student values. The courts have determined that there is a very fine balance between the interests of protecting an individual's rights and what policies may be in the best interest of the institution.

The concept of “*in loco parentis*” is an often overused and misunderstood term among those who instruct, lead, and supervise children. *In loco parentis* or literally “in the place of the parent” is a legal doctrine that, historically, charged individuals caring for minors (including schools and camps) with the same rights, duties, and obligations possessed by the child's parents — most commonly in the area of discipline or conduct. Historically, the doctrine was extended to provide these individuals/entities with protective immunities similar to those provided to parents; for example, the ability to discipline and act without fear of liability. In other words, the doctrine was used as a “shield” and not a “sword,” providing caregivers with protections and flexibility in the areas of discipline and conduct, similar to that allowed of the parent (Jones v. Barlow, 2007).

In fact, teachers stand in *in loco-parentis* only to the degree that they may act somewhat like a parent does only some of the time for the purpose of maintaining orders in our educational systems. Moreover, Nakpodia (2012) opined that the doctrine of “*in-loco-parentis*” had been based on the assumption that by sending their children, parents agree to delegate to school officials the power or parental authority to control their children’s conduct in a manner that will be in the best interest of the child.

As stated by Van der Smissen (2011) that students utilize litigations to protect their constitutional rights when an institution's policies or procedures have violated those rights. The doctrine of *in loco parentis*, (when well defined) will go a long way to harmonise crises in Teachers-students relationship. This was affirmed by Nakpodia (2009) who also maintained that discipline in school is used to refer to the maintenance of general conditions or order without which nothing can be effectively achieved.

In most general sense, discipline refers to systematic instruction given to members of a group such as students in a school. To discipline means to instruct a person to follow a particular code of conduct. It involves regulating, monitoring and supervision. Usually, the phrase “to discipline” carries a negative connotation. This is because enforcement of order – that is ensuring instructions are carried out – is often regulated through punishment. Consequently, in the field of child development, discipline refers to methods of modelling character

and of teaching self control and acceptable behaviour. To be disciplined is then, subject to content, either a virtue, which may be referred to as disciplinary procedure or a euphemism for punishment, which may also be referred to as disciplinary procedure (Reyes, 2006).

Measures adapted by teachers [or management of tertiary institution] include suspension and expulsion (Anho, 2011). If parents are expected to discipline their children through instructions, supervision, monitoring and regulating conducts, the doctrine of *in loco parentis* in tertiary education requires that universities instruct, monitor, and regulate student conduct. In addition, universities like Babcock University employed community services and other regulated activities (that is, restriction from going outside the domains agree by parents of students or wards) as disciplinary measures (students Handbook, 2010). The need for student to be discipline arose out of the need to curtail epidemic nature of disciplinary problems, disorderliness, and issues with negative legal implication in Nigeria schools.

Another purpose for discipline is to maintain orderliness, and all tertiary institutions should have in mind that disciplinary measures should be used to make positive transformation and create room for change in behaviour that does not impede progress of students in any way. As affirm by Anho (2011), a discipline mind is an asset of any society, and the school is part of the process for training the youth in order to produce a balanced and disciplined citizen. The phrase that "the school is a silent teacher of morals" should be taken seriously. Keeping up with laws and legislation is not only good practice that legally protects the camp [tertiary institutions] but also the right thing to do because it results in the creation of a caring community aimed at protecting vulnerable populations (Moffitt, 2014).

Corcoran (2005) identified that most tertiary institutions are crowded with millennial generation, that is, students born between 1982 and the present. Unlike in the past, these students' parents are heavily involved in the college decision-making process. In other words parents are more interested in their wards institutions experience than before. The doctrine of *in loco parentis* does not exist in vacuum but comes with rules and regulation that makes implementation of *in loco parentis* successful without fear of breach of one's fundamental right.

The values of campus community should be purposeful, open, just, disciplined, caring, and celebrative. This new approach to understanding the institution/student relationship from a community perspective rather than custodial perspective is the key to the generation of community values (Hamilton & Lowry (1997). It was also revealed that though the authority of college and university administrators had forever changed, much confusion was left in the minds of students, parents, and community members. The assumption persists today that when an undergraduate goes to college, he or she will be cared for in some manner by the institution. It was recommended that an approach in which community is a post-*in loco parentis* approach to dealing with modern problems on the campus (ibid).

Involvement of a college or university in the development of student values could perhaps further develop a "special relationship" between the institution and the student, therefore implying a further duty of care. In *Beach v. University of Utah* (1986), the courts determined that the university did not have a special relationship with the plaintiff. "A special relationship was created between college and student that imposed a duty on the college to exercise control over student conduct, and reciprocally gave the students certain rights of protection by the college" (Hoekema, 1994, p. 176).

Conclusion

The trend of *In loco parentis* implementation across history has dwindle, and different events of life that pertain to education law had impact the doctrine of *in-loco parentis*. These events pose as liability to institutions, organisation or individual which shows that directly or indirectly tertiary institutions assumed the role of parents when students are admitted into the institutions.

In most tertiary institutions issues of crisis revolving around student freedom, discipline or punishment, bully, rape, kidnapping, dress code, moral issues, behaviour outside school environments, search and seizure of students' belongings, enforcing release time, providing safety, discrimination, conducive, learning and peaceful atmosphere are of great concern. It is imperative that careful application of doctrine of *in loco parentis* is necessary in our tertiary institutions and we cannot turn blind eyes to this issue if we want a balance system within this country. Furthermore, all stakeholders (institutions, organisations, staff and students) must be involved

Though the constitution of the Federal Republic of Nigeria exists the concept of *in-loco-parentis* has been used by teachers and administrators as a prominent component of the legal and sometimes ethical rationale for the disciplining of students under their charge. Most tertiary believe that it is their duty to prepare their students for the future and the right mind to face challenging environment. These are the things prompting some disciplinary measures employed by varies institutions especially in private university. Integrity, excellence, , innovation, service to humanity, hard work, good character, respect healthy living, justice, equity and unity are watch word and core values for these tertiary institutions. These core values shape the disciplinary measures

adapted as policies and the extent at which the doctrine of *in loco parentis* is practised though shaped by past legal issues that have occurred within and outside the nation.

This paper calls for careful integration of various approaches in applying *in loco parentis* in tertiary institutions, thus it goes beyond discipline, and depending on the situation on ground may include welfare, security and other issues that affect students and possibly with legal implications on the educational institutions.

Recommendation

1. First and foremost, for effective implementation of *in loco parentis* in Nigerian tertiary institutions issues of adequate knowledge about *in loco parentis* should be well impacted considering the educational law or constitutions. Nakpodia (2012) affirmed that educating teachers about their responsibilities to students within the doctrine of *in loco parentis* should be highly prioritized. The experienced and the less experienced teachers should take courses in school law which will improve their knowledge of legal aspects of school operation which significantly changes their general attitude of school administration.
2. Re-orientation of faculty and staff of tertiary institutions to the realities of parenting 21st century students. This can be achieved through in-service training for both new and old employees. If they are to act in place of parents, then they need to know what parenting means in contemporary campus life experiences.
3. Another effective step that can aid in *in loco parentis* implementation in tertiary institutions is by assigning disciplinary measures to supporting staff that have little or no legal knowledge about the legal implications on the governance, discipline, care and safety of students placed in their care. The legal position concerning the *in loco parentis* position of teachers seems to culminate in this argument of the *comparability* of the duties of teachers with those of parents. School managements need to be well acquainted with articles 23 and 24 of the 1999 constitution in Nigeria which can promote civil duties of the citizen. Therefore, whatever the educational institutions adopt as rules and regulations should promote the constitution by discouraging violence and illegal activities; assure public trust, discourage falsehood and perjury (Nakpodia, 2009).
4. Staff or school management should know the circumstance surrounding the misbehaviour before arriving at a plan of action. Some of this information may be gotten from the students, some from those workers who have specialized knowledge and the competence to place such knowledge in its appropriate context. The best diagnosis possible is needed if the staff is to be effective in helping youngsters towards the ultimate goal of self-discipline through the doctrine of *in-loco-parentis*.
5. Effective Students Support Services: *In loco parentis* cannot be effectively implemented in tertiary institutions without students support services such as counselling centres. Such services with qualified and experienced personnel can serve as an interface for staff and students relationship thereby saving the institutions resources and time used for litigation, this is possible when student support services are solution oriented and maintain a healthy relationship with parents (guardians) in the course of disciplining any child. There should be records of students' misbehaviour and the type of disciplinary measure employed coupled with remedial steps to correct or avert the disciplinary measure employed such as warning letters. Parental involvement can also be enhanced through notifications and family collaboration meetings at the universities.
6. Every tertiary institution has its own policies or regulations binding not just students but staff, and it differs across institutions, especially between private and government-owned institutions. Rules and regulations should be clearly made known to students and to parents. The Universities may also organize parent orientation and forums. There should be a clear, cohesive, and comprehensive definition of the institution-student-parent relationship. Students should voluntarily accept all schools' regulations by putting their signatures to it. Policies (rules and regulations) of tertiary institutions do not come 'out of the blues' rather they are rational for their existence which related directly or indirectly to *in loco parentis*. For instance, some tertiary institutions do not permit the use of boiling ring or portable gas cylinder and most students may perceive it as an infringement on their right to comfort or welfare. Rational for this rule may be for safety of lives and properties. Accidents resulting from this may bring to mind of parents, victims and concerned citizens in *in loco parentis* which comes with legal implications.
Article 35 of the 1999 Nigerian constitution, specifies the right to fair hearing before one's private property and liberty (Nigerian constitution, 1999), can be taken away. A student whose property is seized may take legal actions in connection to article 35, however, rules which a student agrees to by signing may not be contended with. In a situation where the school management are indifferent about it and students are not made to consent to the ban with their signatories to a form, parents or victims may sue for compensation, when items such as boiling ring leads to fire accidents resulting to injuries or death. It is easy for some victims' parents to sue the school management, claiming damages for negligence.
7. An important lesson that warrants *in loco parentis* in tertiary institutions is the case of Elizabeth Shin, a 200 level student of Massachusetts Institute of Technology. In the year 2000, her parents filed a \$27 million wrongful death lawsuit against the Massachusetts Institute of Technology. Elizabeth had a history of

- psychiatric problems and attempted suicides. For 14 months, she had visited with MIT therapists and yet she committed suicide. Her parents were of the position that the school management failed to inform them about the nature and severity of their daughter's illness (The Michigan Daily, 2002). Therefore, it is important that students undergo thorough medical check up and track previous medical history where necessary for continuity of effective interventions. Parents should be informed about health status with the consent of the students because students as patients have right to confidentiality.
8. School's management should be proactive to identify risk factors and take appropriate actions to prevent dangerous exposure to students. It brings to mind issues of accidents due to lack of maintenance of school structures, and warnings signs and instructions should be place at such point of danger to create awareness. The schools also need to be intentional in creating a safe environment that is free of infrastructural hazards.
 9. Students and some parents may oppose the doctrine of in loco parentis especially when it is against their freedom or assumed right. Articles 32 and 34 of the constitution of the federal republic of Nigeria relate to personal liberty and despite of that the tertiary institutions may have policies that are set to maintain orderliness and safe environment. For instance, in Lent and Ramadan feast period release time can be enforce. This relates to the role of in loco-parentis which the school management assume based on the fact that, the to and fro of the students point to safety which is the responsibility of an educator.
 10. Also there can be some exemption when issues of enforcement of release time, going by Article 33 of the 1989 Nigerian constitution and 5 of the United Nations charter specify people's right to be free from torture and attain personal liberty indicate that persons who have attained the adult suffrage may not be unnecessarily denied personal liberty based on educative and welfare purposes. (Nigerian constitution, 1999; United Nations Charter, 1948). This can encourage flexibility in loco parentis. Nakpodia (2005) stated an application of in loco parentis within secondary school which can be applied to tertiary institutions. Staff or school managements by their virtue of the doctrine of in-loco-parentis in Nigerian schools should constantly help in school settings to discourage crimes and promote conducive learning atmosphere.
 11. Enhance security: The case of Government Girls' Secondary School, Chibok has agitated the doctrine of in-loco parentis in Nigeria. The principal of the Borno State owned Government Girls' Secondary School, Chibok, who is tag as the Chief Custodian of the girls in the school has the responsibility of safety of the female students. As affirmed by Tayo (2014), if the parents are agitated as expected, the law of in loco parentis dictates that the school authorities, headed by the principal (Mrs Asabe Aliyu Kwambura) and its owner as symbolised by the governor and indeed the federal authorities also share in the responsibilities and should know no sleep until the last of the girls is found. Stakeholders have repeatedly stressed the need to enhance security on our educational facilities, especially in regions under threat. It was also emphasise that there ought to be on ground adequate security given the template of insurgency in the North East.
 12. Lastly, the values of campus community should be purposeful, open, just, disciplined, caring, and celebrative. As further stated by Sweeton & Davies (2007) institution should make sure that the language used in orientation and publications such as informational pamphlets and brochures matches the institutional philosophy on *in loco parentis*. Moderate right syndrome and formulation of behavioural expectations for teachers and learners will improve in loco parentis discipline. Keeping in loco parentis in mind, a Code of Conduct for students and tertiary institutions staff is very important, and this spring board towards nurturing or promoting a culture of self discipline, integrity, mutual respect, accountability, tolerance, co-operation, personal development within the tertiary institutions and its surroundings.

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