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HOW MEXICAN PRINCIPALS DEAL WITH TEACHER UNDERPERFORMANCE: A STUDY OF HOW PUBLIC MIDDLE SCHOOL PRINCIPALS IN MEXICO CITY MANAGE UNDERPERFORMING TEACHERS*

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Abstract. *This study, based on thirty-eight interviews of principals from public middle schools in Mexico City, analyzes the criteria and methods used by these school officials to identify underperforming teachers, as well as how they wield discretionary authority. The study also proposes several measures that can be implemented by educational authorities to improve how these cases are handled. These measures include improving both principals' training and the mechanisms used to evaluate teacher performance in the classroom.*

Key Words: *Teacher underperformance, teacher performance, middle schools, Mexico, principals, educational administration, school administration, public schools, Mexico City.*

Resumen. *Con base en 38 entrevistas realizadas con directores de secundarias públicas localizadas en el Distrito Federal, este estudio analiza los criterios y métodos empleados por estos funcionarios para identificar a los docentes de bajo rendimiento, y cómo éstos usan sus facultades discrecionales para lidiar con estos casos. Se proponen varias medidas que pueden ser implementadas por las autoridades educativas para mejorar el tratamiento de estos asuntos. Entre las medidas propuestas destaca el mejorar la preparación del director para ejercer el cargo y los mecanismos usados para evaluar el desempeño del docente en el salón de clases.*

Palabras clave: *Bajo rendimiento, secundarias, México, directores, administración educativa, educación pública, administración escolar.*

* This article is based on chapter IV and of my doctoral dissertation entitled *How Do Principals Deal with Underperforming Teachers? A Study of How Principals from Middle Schools in Mexico Manage Underperforming Teachers*, submitted to the Stanford Law School for the completion of the Doctor of Science of Law (J.S.D.) program. I thank Dinorah Vargas for her valuable comments and research assistance.

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I. Introduction

1. *Teacher Underperformance*

The phenomenon of underperforming teachers, also referred to as incompetent[1] or marginal,[2] has already been studied in other countries. In 1992, Edwin Bridges published a pioneering study which analyzed the perceptions of school administrators from diverse California school districts toward teacher

[1] Edwin Bridges, The Incompetent Teacher, Managerial Responses 24 (The Falmer Press: Washington, D.C., 1992).

[2] Jim Sweeney & Dick Manatt, *Team Approach to Supervising the Marginal Teacher*, 14(7) Educational Leadership 25-27 (1984).

incompetence. After Bridges's study was published, other studies on teacher incompetence were realized both in the U.S. and elsewhere.[3]

These studies provide a number of important lessons. First, most studies to date have focused on the phenomenon of underperforming teachers from a managerial perspective. As pointed out by Torff and Sessions,[4] one approach to evaluate teacher performance involves the consultation of principals who, as school administrators, supervise and evaluate teachers. Several reasons are cited for this reliance on principals to study teacher underperformance: first, principals are in an excellent position to observe how teachers perform; second, principals regularly receive comments regarding teacher performance from students, parents and other supervisors; third, principals are former teachers with teaching experience; and fourth, principals are responsible for hiring and granting tenure to teachers. These studies also explore methods commonly used by principals to detect poor classroom performance; as well as how principles respond in these situations. These and other factors are then used to determine how to resolve cases of teacher underperformance. These studies[5] highlight the fact that when dealing with classroom underperformance, principles have a strong tendency to use informal measures.

Despite these lessons, more research is needed to better understand teacher underperformance. Few studies, for example, have yet examined teacher underperformance in low- or middle-income countries.[6] This study shall hopefully contribute in this respect. Also, the study of teacher underperformance has been limited to underperformance in the classroom. This research

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[3] Sahin, Ali E., *Practices Used by Arizona School Districts Dealing with Incompetent Teachers*, Annual Meeting of the American Education Research Association (California, American Education Research Association, 1998); see also Painter, Suzanne R., *"Principal' Efficacy Beliefs About Teacher Evaluation*, 38(4) Journal of Educational Administration 368-378 (2000). See also Painter, Suzanne R., *Principals' Perceptions of Barriers to Teacher Dismissal,* 14(3) Journal of Personnel Evaluation in Education 253-264 (2000); Wragg, Edward C. et al., Failing Teachers? (New York: Routledge, 2000). Tucker, Pamela D., *Lake Wobegon: Where All Teachers Are Competent (Or, Have We Come to Terms with the Problems of Incompetent Teachers?)*, 11(2) Journal of Personnel in Education 03-126 (1997); Earnshaw, Jill, Lorrie Marchington, Eve Ritchie & Derek Torrington, *Neither Fish Nor Fowl? An Assessment of Teacher Capability Procedures,* 35(2) Industrial Relations Journal 139-152 (2004). Yariv, Eliezer, *Challenging' Teachers: What Difficulties do They Pose for their Principals?*, 32(2) Educational Management Administration Leadership 149-169 (2004); Bruce Torff & David N. Sessions, *Principals' Perceptions of the Causes of Teacher Inefectiveness,* 97(4) Journal of Educational Psychology 530-537 (2005). See also Brian Jacob & Lars Lefgen, Principals as Agents: Subjective Performance Measurment in Education (Harvard University: 2005); Glenn Daley & RosaValdés, *Value Added Analysis and Classroom Observation as Measures of Teacher Performance*, Los Angeles Unified School District, Program Evaluation and Research Brand: 2006, Planning, Assessment and Research Division Publication No. 311.

[4] See Torff & Sessions, *supra* note 3, at 531.

[5] See Bridges, *supra* note 3. See also Earnshaw, *supra* note 3.

[6] Yariv, *supra* note 3.

attempts to go beyond that. In reality, underperformance encompasses a diverse range of behaviors cited by principals from public middle schools in Mexico City, including misconduct, criminal behavior, tardiness and unjustified absences.

2. *Evidence of Teacher Underperformance*

The terms classroom underperformance, misconduct, sexual offenses, tardiness and unjustified absence are used here to cover all types of behavior committed by underperforming teachers.[7] The misconduct includes any wrongful conduct committed by teachers against either school personnel or students (including physical or psychological harm). A sexual offense is a specific type of misconduct that results in significant damage and is usually treated differently. There are three types of sexual offenses: harassment, abuse and rape.

In the following paragraphs, this paper presents evidence supporting the fact that teacher underperformance is a problem in public secondary schools in Mexico, particularly in Mexico City.

Academic studies clearly show that teacher effectiveness has a profound impact on students' academic achievement.[8] In general, teachers are deemed "effective" when sufficient evidence exists to show that his or her students have acquired adequate knowledge and abilities. Standardized exam results are often used to measure teacher effectiveness.[9] Mexican students' average scores, both in reading and math, are among the lowest of any country in the OCDE. The PISA 2009 results, based on 65 countries, ranked Mexico 48th in reading and 51st in math.[10] Another OCDE survey, the Teaching and Learning International Survey of 2009 (TALIS), reports that over 60% of Mexican schools report lack of teacher preparation as a major obstacle to learning, double the OCDE average.[11]

The National Evaluation of Academic Achievement ("ENLACE" for its initials in Spanish), a standardized test recently conducted in Mexico, has

[7] In general, during the manuscript, I use the terms *underperformance/underperforming/low performance/low performer* to refer, in a general manner, to all these behaviors.

[8] Organization for Economic Co-operation and Development [Hereinafter OECD], *Attracting, Developing and Retaining Effective Teachers, Country Background Report for Mexico, Overview*, at 12 (Paris, 2005).

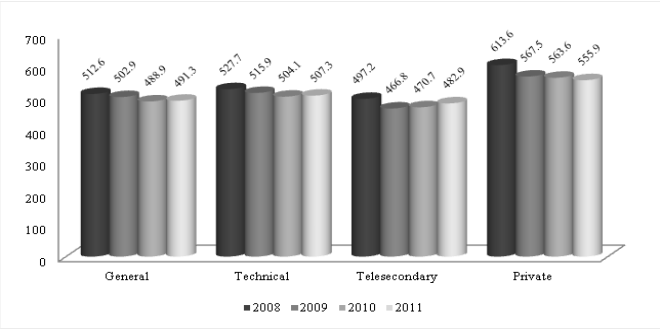
[9] Emiliana Vegas & Ilana Umansky, *Improving Teaching Education Reforms in Latin America*, in Incentives to Improve Teaching, Lessons from Latin America 5 (E. Vegas ed., Washington, D.C., World Bank, 2005).

[10] The Program for International Student Assessment (PISA), a standardized exam given by the OECD to evaluate 15-year-old students' knowledge and abilities. See OECD, *PISA 2009: Science Competencies for Tomorrow's World* (Paris, 2009).

[11] OECD, *Estudio Internacional sobre la Enseñanza y el Aprendizaje (TALIS), Resultados de México* (SEP, 2009).

been especially useful to measure the performance of Mexico City-based middle school students. The ENLACE exam is administered to Mexican third graders and covers language, math and science.[12] The following graph shows the average ENLACE 2008-2011 scores of third-grade students located in Mexico City, according to school modality.[13]

Graph 1. ENLACE Historical Average Score of Third-Year Students in México City Secondary Schools by Modality



Source: ENLACE, http://enlace.sep.gob.mx/.

The ENLACE 2008-2011 results show the low academic level of general middle school students in comparison with students at technical and private middle schools (general, technical and telesecondary are public middle schools). Many factors, subsequently developed, may help explain this disparity, including the academic preparation of teachers and class hours, among others.[14]

Evidence of other reasons for underperformance, such as physical harm, psychological damage, and sexual offenses, is less evident, but exists. Several studies have exposed what has been termed "institutional violence" or offenses committed by school personnel against students.[15] The *Unidad de Atención*

[12] Secretaría de Educación Pública [S.E.P.] [Public Education Ministry], *Evaluación nacional de logro académico de centros escolares*, *Documento de apoyo para los talleres generales de actualización* (México, SEP, 2008).

[13] School modality: general, technical, telesecondary and private.

[14] Evidence from Mexico states that students attending evening school schedules obtain worse scores compared to students attending the morning hours. See Sergio Cárdenas, *Escuelas de doble turno en México*, 16 (50) Revista Mexicana de Investigación Educativa 801-827 (2011). There are also differences in scores caused by family income level, urban or rural location of the school, secondary's model type (indigenous vs. non-indigenous, and secondary vs. telesecondary), time dedicated to the classroom learning process, educational material and several other social and family-related factors. See Claudia Rodríguez & José Vera, *Evaluación de la práctica docente en escuelas urbanas de educación primaria en Sonora*, 12 (35) Revista Mexicana de Investigación Educativa 1129-1151 (2007).

[15] Jorge Silva & Adriana Corona, *Violencia en las escuelas del Distrito Federal. La experiencia de la*

al Maltrato y Abuso Sexual Infantil (UAMASI) [Unit for the Attention of Harm and Sexual Abuse against Children] is an entity responsible for handling complaints of violence in Mexico City schools (public and private). Based on studies realized by Silva and Corona,[16] 3,242 complaints were filed before the UAMASI between 2001 and 2007. In 85.78% of these complaints, at least one of the suspects was a school employee; in only 11.1% of these cases were students considered suspects. Considering only complaints involving school personnel, 48.47% involved physical harm; 33.66% psychological harm; 14.56% sexual offenses (either harassment or abuse); and 3.31% other behaviors. In another study,[17] Silva states that between 1998 and 2008, the *Dirección General de Asuntos Jurídicos* General Office of Legal Affairs of the Ministry of Education ("DGAJ" for its initials in Spanish), analyzed 229 administrative hearings (the procedure used to initiate the dismissal of tenured teachers) that involved sexual offenses (sexual abuse or harassment).

II. Methodology and data

This work will address three main issues:

1) What criteria are used by principals to identify underperforming teachers?
2) How do principals identify teachers and prove underperformance?
3) How do principals use their discretionary authority to deal with cases involving teacher underperformance?

To answer these questions, several interviews were realized with educational officials (principals, supervisors, teacher supervisors and superintendents)[18] who work in middle schools in Mexico City. Although the study focuses on the principal's point of view, interviews with other officers were realized to verify the information provided by them.[19] Interviews with educational officials were conducted in two stages. The first was realized in September 2007, and involved interviews with one principal, three supervisors and one

Unidad para la Atención al Maltrato y Abuso Sexual Infantil, 2001-2007, 15 (46) Revista Mexicana de Investigación Educativa 739-770 (2010a); see also Jorge Silva, *Procedimiento para cesar al personal de la Secretaría de Educación Pública que acosa y/o abusa sexualmente de los alumnos/as: legislación, evidencia y recomendaciones para el cambio*, 11(2) Revista de Estudios de Violencia 1-25 (2010b).

[16] Silva & Corona, *supra* note 15.

[17] Silva, *supra* note 15.

[18] Every general middle school is overseen by a principal. A number of schools located in the same territorial jurisdiction comprise a School District, which is headed by a superintendent.

[19] Norma K. Denzin & Yvonna S. Lincoln, Collecting and Interpreting Qualitative Materials 478 (California: Sage, 2008).

superintendent utilizing a semi-structure protocol.[20] Informal talks were also realized with principals, supervisors and teacher supervisors. The goal of the first stage was to pilot the interview protocols previously designed. The second stage, realized between July and December 2008, involved standardized interviews[21] based on a questionnaire.

Table 1. Information on the Sample of Officers Interviewed

Officer	*Number of officers*	*Average length of the interview (in hours)*	*Average number of years working in general middle schools*	*Average number of years in the position*
Principal	38	01:27:56	29.79	6.30
Supervisor	10	01:15:58	37.00	9.95
Teacher supervisor	5	01:00:49	39.40	6.00
Superintendant	4	01:23:22	41.75	5.38

Principals interviewed in the second stage were selected using a convenience sample technique known as snowball.[22] This technique was implemented in the following way: first, access was secured to supervisors representing every county in Mexico City; second, every supervisor was interviewed and, at the end of the interview, asked to propose two or three principals for further interviews on this topic. The supervisors were told that the principals chosen for the interview must have experience in dealing with underperforming teachers. Because it was not possible to determine the sample size of interviewees a priori, the saturation point criterion was used.[23] This criterion assures that the sample size is determined by the amount of additional information given by the last unit interviewed. Using the aforementioned standard, interviews were realized in the second stage with 38 principals, 10 supervisors, 5 teacher supervisors and 4 superintendents. The teacher supervisors and superintendents were also contacted through the supervisors. Only 5 of the 57 officers interviewed did not permit the interview to be recorded. Table 1 shows information on the sample of officials interviewed in the second stage.[24]

[20] Michael Q. Patton, Qualitative Research and Evaluation Methods 342 (California: Sage, 2002). A semi-structure interview is guided by a list of item, which allows the interviewee some flexibility.

[21] *Id.*

[22] *Id.* The snowball sample was obtained in the following way: the first principal referred a second principal, and then that second principal referred a third one, and so on. The main reason to select this technique was the difficulty in gaining access to the principals.

[23] Yvonna S. Lincoln & Egon G. Guba, Naturalistic inquiry 202 (California: Sage, 1985).

[24] I also conducted interviews with other actors frequently involved in underperformance

A quick look at the characteristics of the principals interviewed for this study shows a bias toward those with experience in handling underperforming teachers. For this reason, the opinions of inexperienced principals, who may hold different views about the issues described herein, are not included in this study. The sample is also biased against parents, students, teachers and other community members, whose views do not appear in these pages. Undeniably, parents, students and community members have a close relationship with school personnel and can provide accurate information regarding how principals handle underperforming teachers. Teachers, for example, have a close relationship with principals, and can provide valuable information on the principal's performance in diverse areas.[25]

The participation of all the interviewees was voluntary and confidential. The education officials never provided any personal or confidential information of school personnel or students under their supervision.

III. Principals' Responses in Cases Involving Underperforming Teachers

As the data will show in the following sections, principals rarely rely on formal measures stipulated under law to address teacher misconduct;[26] instead, they tend to resort to diverse informal mechanisms. As one of the principals interviewed said, "formal measures are only used as a last resource, and when it is no longer possible to reach a viable solution with the teacher." Other studies have also found that principals tend to use informal measures to deal with teachers who perform poorly in the classroom before taking legal action.[27] This section will review the process followed by principals when dealing with teacher underperformance.

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cases: the director of the UAMASI, two judges from the *Tribunal Federal de Conciliación y Arbitraje* (TFCA) [Federal Tribunal of Conciliation and Arbitration], lawyers who work in the DGAJ, union representatives and private lawyers who represent teachers in termination cases. Most of these interviews were performed between September and December 2008. While the union representatives and private lawyers allowed me to record the interviews, none of the public servants gave their authorization.

[25] Since I did not have sufficient resources to interview these actors, I opted for other sources for verification, including testimony provided by supervisors, teacher supervisors, superintendents and, in some cases, information obtained from documents or databases. Note that previous research on this topic has taken into consideration the views of other stakeholders besides teachers and administrators. See Wragg et al., *supra* note 3.

[26] For a complete explanation of the legal framework that regulates the performance of general middle school teachers in Mexico, see Joge Silva, *An Overview of the Rules Governing the Performance of Public Middle School Teachers in Mexico,* 3 (1) Mexican L. Rev. 151-185 (2010).

[27] Bridges, *supra* note 3; Wragg et al., *supra* note 3. Earnshaw, *supra* note 3.

1. *What Criteria Are Used by Principals to Identify Underperforming Teachers?*

In the interviews, each principal was asked about the underperformance cases handled in the school where he or she has worked the longest. After being given a list of underperforming behaviors, each one of them was asked to record the number of cases they had personally handled for each behavior type. Table 2 summarizes their responses.

Table 2. Underperformance Clases Reported by Interviewed Principals (N=38)

*Type of behavior**	*None*	*From 1 to 5 cases*	*From 6 to 10 cases*	*More than 10 cases*	*Number of principals who responded*
Sexual abuse or sexual harassment	24	12	1	1	38
Physical or psychological harm	8	20	8	2	38
Other types of misconduct*	2	4	5	27	38
Underperformance in the classroom**	2	15	13	6	36
Incompliance with administrative duties related to the performance of the teacher in the classroom***	5	3	6	22	36

Notes:

* Other types of misconduct: Violent discussions between the teachers or between teachers and parents, teacher behavior that disrupts the school organization, such as teachers who create conflicts in the organization of the school by manipulating parents or students, or teachers who close the school; disrespectful behavior of the teacher when dealing with the principal or parents, disobedience, misuse of the school funds by the teacher, the teacher attends work under the effects of alcohol or drugs, the teacher does not help take care of students during the school breaks.

** Underperformance in the classroom: failing in teaching the contents, evaluating or supervising the students, the teacher abandons the classroom when teaching.

*** Incompliance with administrative duties related to the performance of the teacher in the classroom: failing in developing the lesson plan or submitting this document to the principal for evaluation.

During the interviews, principals were also asked the following question: "Do you consider teacher absenteeism and/or tardiness a problem at your current school?" In response to this question, principals had to select any of the following options: "not a problem"; "minor problem"; "problem"; "significant problem", "very significant problem". All the principals interviewed stated that teacher tardiness and unjustified absenteeism was (at the very least) a "problem" in their current school.

2. H*ow Do Principals Determine the Identity of Underperforming Teachers?*

During the interviews, principals were asked to rank the methods they used to detect underperforming teachers at their schools. the principal was instructed to assign the number "one" to the method used most frequently; number "two" to the second most-used method; and so forth. Table 3 depicts the number of times each method was rated number one, number two or number three, as well as the number of principals who assigned a number to each method.[28]

Table 3. Methods More Frequently Used by Principals to Detect an Underperforming Teacher (N=34)

Method	*Selected as option 1*	*Selected as option 2*	*Selected as option 3*	*Selected as option 1, 2 or 3*	*# Principals who assigned a number to this method*
Parent complaint	4	11	9	24	34
Student complaint	12	8	4	24	34
Observations of principal or assistant principal	12	2	6	20	33
Observations of hall supervisor	1	5	7	13	31
Low student archievement	6	1	0	7	31
Observations of the group advisor	0	2	5	7	22
Teacher complaint	0	2	2	4	28
Standardized test	0	3	0	3	22
Teacher's indifference in collegial activities	0	1	1	2	25

As shown in Table 3, principals take into account parent and student complaints more than any other resource to identify underperforming teachers (24 out of 34 principals marked these methods as number one, two or three). Parents regularly lodge their complaint with the school principal. Although the complaints can be filed in written or oral form, principals tend to pay more attention to written complaints, since these require a written response. Written complaints can eventually be used as evidence to support the filing of formal measures against a teacher. Parents are also entitled to file complaints

[28] In the evaluation, some principals failed to rank either all or some of the methods listed.

with other outside education officials, including the supervisor, superintendent or the School Complaints Office. A complaint filed before an outside official will eventually be referred to the principal, who is the final authority responsible for resolution. Although filing a complaint before an outside education official can delay resolution, once the complaint reaches the principal, he or she must take immediate steps to resolve the issue. In these cases, the principal must also submit a written report to the educational authorities involved regarding whether or not the problem has been resolved. Principals also stated that student complaints frequently alerted them to teacher underperformance. Because students are afraid of teacher retaliation, their complaints tended to be anonymous. Depending on the situation, principals may or may not decide to notify the parents before pursuing a complaint. Prior research has shown that the observations of the principal as well as of parents and students are the two most common methods used to identify underperforming teachers.[29]

Observations of school personnel also play a critical role in providing principals with valuable information. Principals frequently rely on their own observations and those of assistant principals to detect underperformers (20 out of 33 principals indicated this method as number one, two or three). Principals and assistant principals mainly gather these observations from walking in the hall and, sometimes, visiting classrooms in order to directly supervise teachers' performance. Based on the interviews, principals spent an average of 44.31% of their total time doing administrative tasks, and only 17.5% supervising teacher performance. Since principals spend such a significant amount of time dealing with administrative matters, they rely heavily on support provided by school personnel, in particular hall supervisors,[30] who report irregularities regarding teacher behavior or student discipline directly to the principal.

There are other methods that principals use less frequently to detect underperformers. At the beginning of every school year, the principal assigns to every group of students a teacher who is responsible for advising them on academic and disciplinary matters. Among other duties, this group advisor is responsible for reporting student complaints regarding teacher underperformance directly to the principal (7 out of 22 principals marked this method as number one, two or three). Teachers may complain about colleagues (7 out of 22 principals marked this as number one, two or three). According to the principals interviewed, teachers' complaints are rare but can arise when the claimant is directly affected by the behavior of the underperformer. For instance, when a teacher is unable to maintain student discipline, the noise from his or her classroom may prevent teachers in adjacent classrooms from

[29] Bridges, Sahin, Wragg et al., and Earnshaw et al., *supra* note 3.

[30] Principals consider hall supervisors' observations as a useful way to detect teacher underperformance (13 out of 31 principals marked this method as number one, two or three).

properly realizing their duties. Principals may also consider the low academic achievement of students as a sign of an underperforming teacher (7 out of 22 principals marked this as number one, two or three).

3. *How Do Principals Use Their Discretionary Authority to Deal with Underperforming Teachers?*

Previous studies have focused on the steps used by principals to handle teacher underperformance. Bridges describes these steps as follows: first, tolerance of the teacher's poor performance; second, an attempt to "save" the teacher; third, an effort to convince the poor performer to either resign or retire early; and, finally, a recommendation to dismiss.[31] For his part, Tucker describes the following sequence: remediation, reassignment, encouragement to resign or retire and, finally, dismissal.[32] These two studies were conducted in the United States, where principals have a certain level of authority to recommend teacher dismissal. Although Mexican public school principals do not have the ability to dismiss or recommend teacher dismissal, they rely heavily on informal mechanisms to handle cases involving classroom underperformance.

The following paragraphs describe the measures generally taken by principals to deal with underperforming teachers. Although these measures vary depending on the specific behavior involved, their main components are outlined here.

Once the principal has detected an underperforming teacher, either by means of a complaint or other means, the first step is to gather evidence to corroborate the alleged misbehavior. As one principal said: "Before taking any measure against a teacher, I must first have enough evidence to convince him that the situation is *not* personal." Depending on the case at hand, the evidence can consist of a confession; testimonies of students, parents, teachers, or other school personnel; or expert testimony issued by physicians or psychologists. Public documents, including judicial decisions, time cards, and academic records can also be important pieces of evidence. In some cases, the claimants can present visual or audio records. As a general rule, principals consider teacher confessions, public documents and expert testimony as the strongest evidence.

Even when an investigation confirms accusations leveled against a particular teacher, principals rarely implement formal measures. As stated earlier, they often resort to informal measures (*i.e.*, those note regulated under law), including dialogue, supportive measures, oral or written recommendations,[33]

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[31] Bridges, *supra* note 3.

[32] Tucker, *supra* note 3.

[33] In the TALIS report of 2009, it was found that Mexican teachers who were never evaluated, or had never received a recommendation in their schools, have a higher probability of

oral reprimand,[34] a written request, reconciliation, negotiation, and segregation of the teacher within the school. Besides written recommendations, written requests and other informal measures rarely produce evidence that can be used to prove teacher underperformance in a formal legal proceeding.

The informal measure most used by principals is dialogue. Dialogue is rarely if ever used to intimidate but rather to make teachers aware of the charges against them. If at this stage the teacher recognizes the accusations, the principal normally shows support, including recommendations on how to improve his or her performance. These measures depend, of course, on each specific case. According to the principals interviewed, many underperformance cases are resolved after this dialogue occurs and supportive and motivational measures are implemented. When this does not happen, the next most utilized method employed by principals is written request. The text of the written request invites the teacher to comply with a particular obligation. An example of a written request is: "Because of your delay in submitting the graded exams, we have been unable to report grades to the students. I urge you to submit the graded exams as soon as you can." Although the written request is archived in the teacher's personnel file, it does not affect the labor conditions of the teacher. This said, the written request plays an important role during the resolution process of underperformance cases, especially to indicate the principal's intent to implement formal measures if the underperformance continues.

The intervention of outside education officials occurs only when principals have exhausted all available informal measures. Two outside officials usually intervene in such cases: the superintendent and teacher supervisor. Principals request the intervention of teacher supervisors when an underperforming teacher —despite informal measures— has failed to improve his or her classroom performance. If this occurs, the principal submits a written petition requesting that a teacher supervisor visit the school. During this visit, the principal describes the measures taken to try to resolve the case. After the teacher supervisor observes the teacher's classroom performance, he writes his observations in the school log. The principal then uses these observations to justify the application of additional formal measures, such as a low evaluation score. During this process, the supervisor plays a significant role by providing advice regarding the reconciliation of the case, as well as how formal measures could be implemented.

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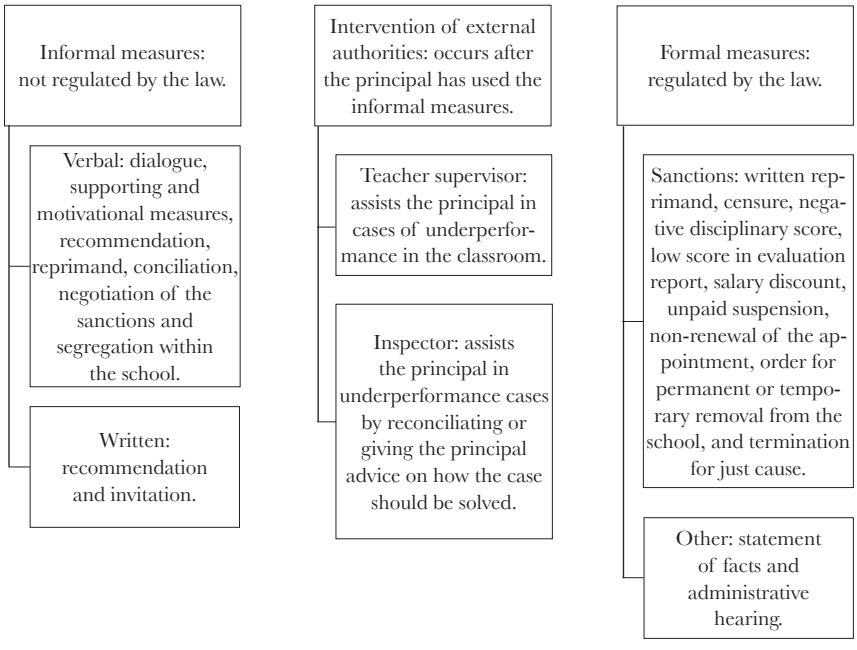
having lower levels of auto-efficacy, even when the relation is indirect. Nevertheless, it also found that the frequency of these evaluations in Mexico is higher compared to the TALIS average (30% of the teachers received at least one evaluation per month, compared to the average of 12%). Most evaluated teachers felt that, in general, these evaluations were fair and useful for their development, satisfaction, job security, and innovation. See OECD, *supra* note 11.

[34] For the purposes of this research, oral reprimands, set forth in section 71 of the General Conditions for the Personnel of the Ministry of Education, are considered to be informal measures.

Measures regulated by law include written reprimands; censure; negative disciplinary points; low evaluation scores; salary discounts; unpaid suspension; non-renewal of teaching contracts; an order for the teacher's permanent or temporary removal; or termination for any just cause. In general, formal measures result in a written record placed in the teacher's personnel file which may be later used to justify further sanctions. There are two formal measures that merit special attention: the statement of facts and the administrative hearing. Principals implement these formal measures to create an evidentiary record that is later submitted to higher educational authorities (either the superintendent or the DGAJ), who make the final decision regarding the formal measures to be applied against the underperformer.[35] In addition to these procedures, the principal may also try to implement informal measures such as negotiation of sanctions or segregation within the school. During the application of informal measures, principals generally try to understand (and are supportive of) the underperformer; during formal measures, however, principals no longer tolerate the underperformance and may in fact try to have the individual removed from the school.

Figure 1 summarizes the measures implemented by principals in cases involving teacher underperformance.

FIGURE 1. MEASURES USED BY PRINCIPALS TO DEAL WITH CASES INVOLVING UNDERPERFORMING TEACHERS



[35] In particular, the DGAJ may decide to start a termination lawsuit before the TFCA.

Implementation of the measures shown in Figure 1 depends on the facts of each specific case. The following section presents and explains several examples that illustrate how the process varies in accordance with different scenarios.

4. *Underperformance Cases Reported by Principals*

The examples and flowcharts presented in this section are based on the experiences of educational officials who participated in the study. The final versions of the flowcharts were approved by the supervisors and superintendents.

In this section, the term *bureaucratic authorities* refers to those entities or individuals from which the principal requests authorization to implement a punitive measure, either on an informal or formal basis, against an underperforming teacher. The role of the bureaucratic authorities is to prevent principals from abusing their discretionary authority when imposing punitive measures against underperformers. The bureaucratic authorities include supervisors, teacher supervisors, superintendents, the DGAJ and the UAMASI.[36] The term *administrative procedures* refers to requirements (*e.g.*, paperwork) submitted by principals to the bureaucratic authorities in order to receive authorization of a punitive measure against underperformers. Finally, the term *authorization standards* (or *standards*) refers to the criteria used by the bureaucratic authorities to authorize punitive measures solicited by principals against underperforming teachers.

A. *Underperformance in the Classroom*

The principal is regularly informed of these teachers either through his or her personal observations of the teacher's performance or the observations of assistant principals; hall supervisors; parents or students; or other teachers' with respect to classroom noise or any other type of misbehavior. In these cases, the principal first attempts to talk to the teacher in a careful and polite manner. At first, the principal seeks to understand the reasons behind the teacher's deficiencies. If during this dialogue, the teacher accepts the fact that he has difficulties in performing his job, the principal often adopts a tolerant attitude, at least for a certain period of time. Despite solid evidence proving their underperformance, some teachers are reluctant to accept responsibility for an underperformance issue. Once informed of the case, the principal

[36] The UAMASI is an entity responsible for investigating complaints involving actions that affect the physical or psychological integrity of students attending schools that offer basic educational services in Mexico, which includes general middle schools.

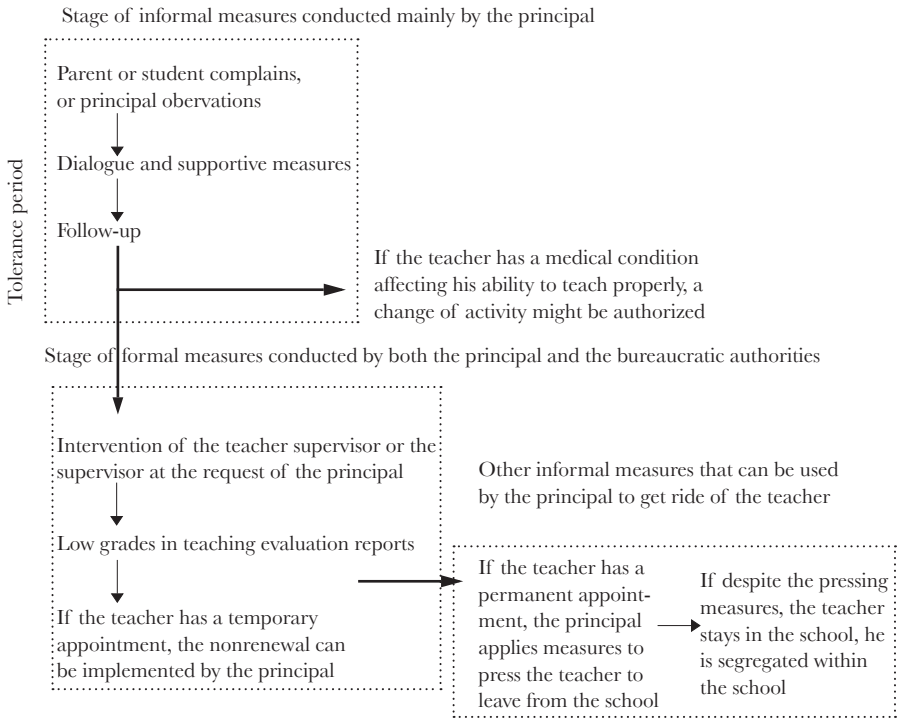
can implement supportive and motivational measures to assist the teacher. Common recommendations include advice regarding teaching techniques; a request that the teacher attend auxiliary classes; information about courses taught at the Teacher Centers; participation in collegial activities; and, in some cases, even a request that the teacher seek psychological treatment. After the dialogue and recommendations, the principal, assistant principal, and other members of school personnel supervise the teacher's performance to verify improvement. This time, is known as the "tolerance period."

If the teacher fails to respond in a satisfactory manner to these informal measures, the principal generally implements one or more written requests. Once a written request has been issued, the principal regards the case as irremediable, and often initiates steps to remove the teacher. After the written request(s), the principal assigns the teacher a low evaluation score, after which he or she may choose to apply even stronger measures (both informal and formal) depending on the circumstances. These measures include failing to renew the teacher's contract (applicable only if the teacher holds a temporary position); segregating the teacher within the school (assigning the teacher solely administrative work); or encouraging the teacher to seek transfer to another school. If during the resolution process, the teacher can prove that he has a physical or psychological condition that affects his teaching ability, the teacher can legally request a change of activities; that is to say, administrative work instead of teaching.

According to principals, many of these cases are resolved through the implementation of informal measures. The bureaucratic procedures to implement formal measures are complex and require a significant amount of time dealing with the authorities. Irrespective of whether convincing evidence exists about classroom underperformance, the formal punitive measures that may be implemented in these cases are often extremely limited, especially if the underperforming teacher has tenure. Since the legal standard used to define classroom underperformance is not set forth under law and, as a result, termination is not a feasible option,[37] principals must often use informal measures in cases involving tenured teachers, including negotiation (in exchange for the principal's decision not to apply sanctions, the teacher voluntarily requests to be transferred to another school); or the segregation of a teacher within the school. As a result of the difficulties involved with removing a teacher either formally or informally, some principals simply opt to tolerate the underperformer. Figure 2 depicts the procedures used by principals to handle cases involving classroom underperformance.

[37] Although the law states that SEP workers must "perform their duties with the required intensity and quality," the meaning of "required intensity and quality" remains undefined in the law and the jurisprudence.

FIGURE 2. PRINCIPALS' RESPONSES IN CASES INVOLVING UNDERPERFORMANCE IN THE CLASSROOM

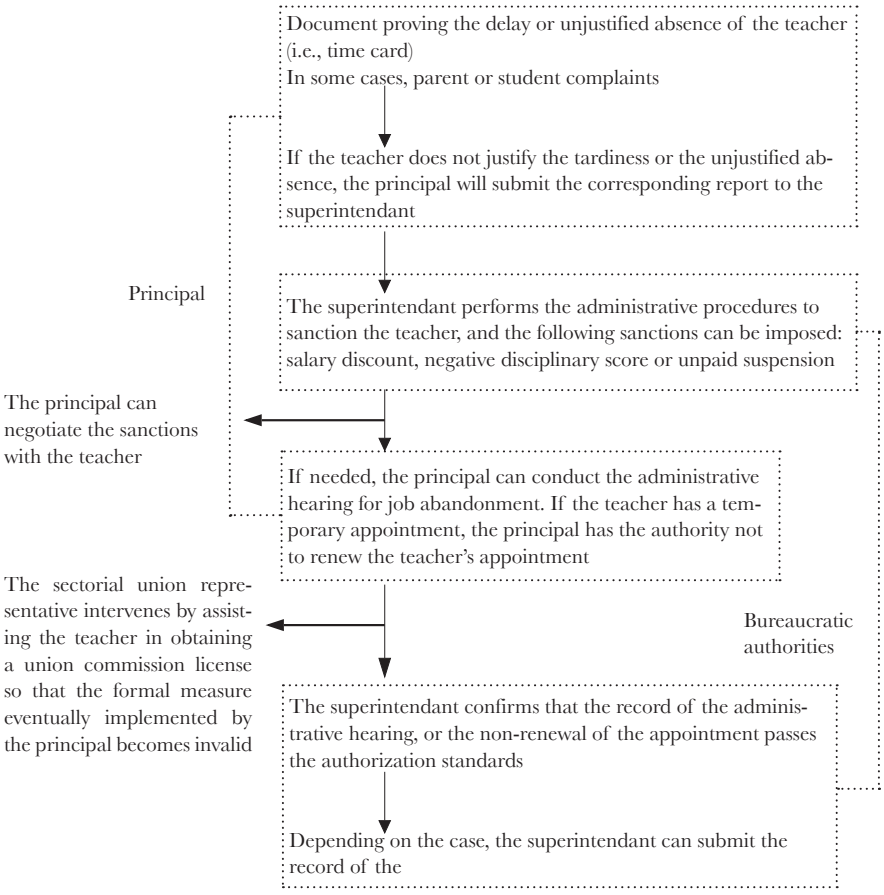


B. *Tardiness or Unjustified Absences*

Bureaucratic procedures to implement formal measures in cases involving tardiness or unjustified absence do not require a great amount of the principal's time and effort. Since evidence supporting these cases may be found in public records (*e.g.*, time cards showing that the teacher was late or absent), the standards established by the bureaucratic authorities can be normally satisfied through formal measures. For this reason, principals use formal measures more often in these types of cases, which include salary discounts, unpaid suspensions, negative disciplinary scores and administrative hearings for job abandonment.[38] Figure 3 below summarizes the procedures generally followed by principals when dealing with cases involving tardiness or unjustified absence.

[38] A jurisprudential criterion provides that job abandonment requires that the teacher fail to attend work in a continuous and unjustified manner for four consecutive days. See Pleno Suprema Corte de Justicia [S.C.J.N.] [Supreme Court of Justice of the Nation], Appendix of 1995, Página 368 (Mex.).

FIGURE 3. PRINCIPALS' RESPONSES IN CASES INVOLVING TARDINESS OR UNJUSTIFIED ABSENCES



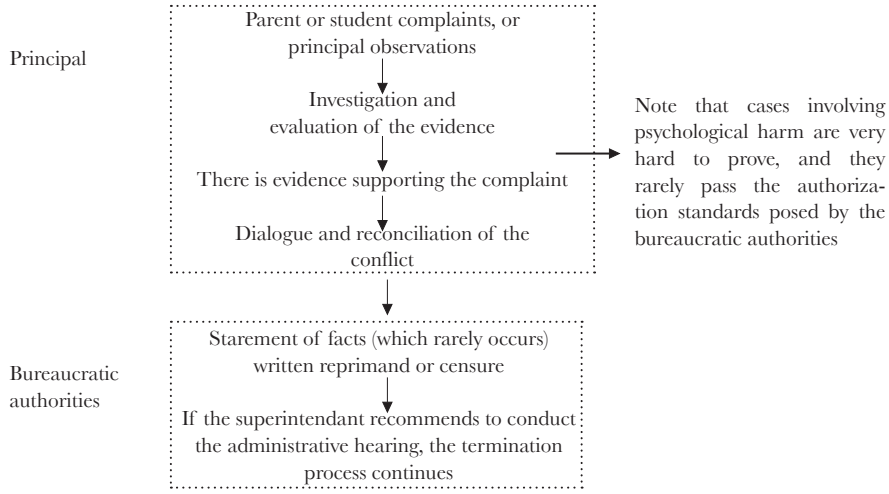
C. *Psychological Harm*

Just as in classroom underperformance, principals normally detect teacher misbehavior through the complaints and observations of parents, students and school personnel. Although principals may lawfully obtain evidence to prove psychological harm, it is difficult using such evidence to justify punitive measures. As one principal said: "Often student witnesses are reluctant to testify […] which often results in the teacher's word against the student's word. In these cases, there is rarely enough evidence to convince the superintendent to order an administrative hearing or transfer."

Because of difficulties with dismissal procedures, many principals resolve these cases through conflict resolution. Depending on circumstances, prin-

cipals may either reprimand or censure teachers in writing. Figure 4 depicts the procedures followed by principals in cases involving psychological harm.

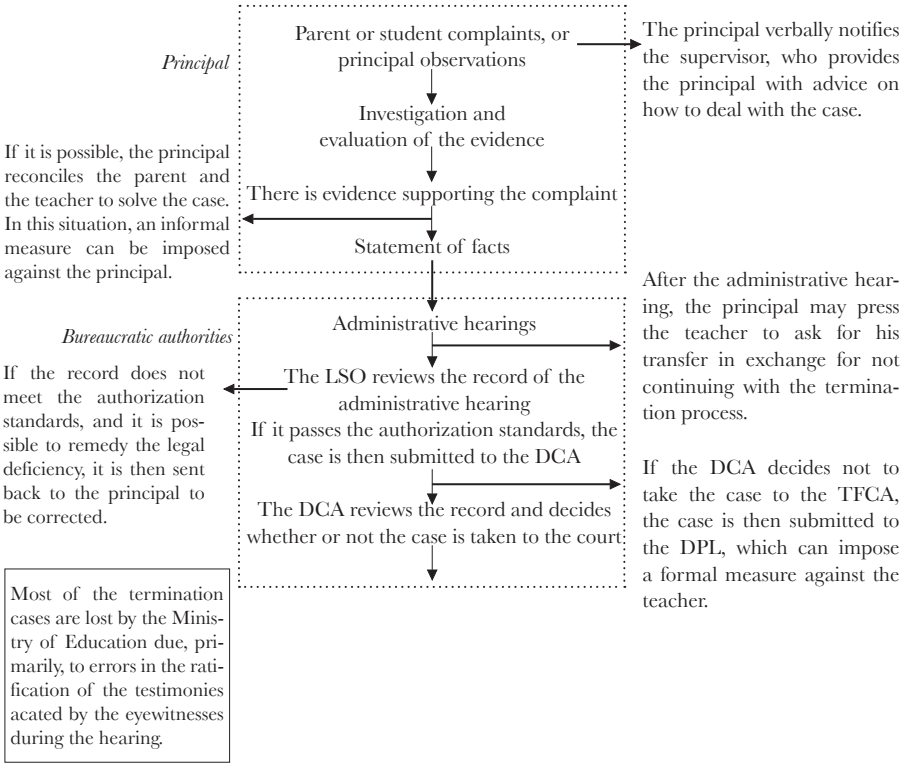
FIGURE 4. PRINCIPALS' RESPONSES IN CASES INVOLVING PSYCHOLOGICAL HARM COMMITTED BY TENURED TEACHERS



D. *Physical Harm*

The principal is generally informed of the teacher's misbehavior through the complaints or observations of parents, students and school personnel. In cases where strong evidence exists, such as third-party witness testimony, the principal will immediately draft the statement of facts. Although the case may still be reconciled later, this step prevents the principal from being later accused of neglect of duty. Once the statement of facts has been reviewed by the superintendent, he may order the principal to conduct an administrative hearing. Once the hearing has been conducted, the superintendent may decide to remove the teacher from the school. Another option would be to reconcile the case after the statement of facts has been drafted, at which point the teacher can either accept a transfer or request a transfer in exchange for a promise by the principals and parents to drop all claims against the teacher. Figure 5 portrays the procedures followed by principals in cases involving physical harm.

FIGURE 5. PRINCIPALS' RESPONSES IN CASES INVOLVING PHYSICAL HARM COMMITTED BY TENURED TEACHERS



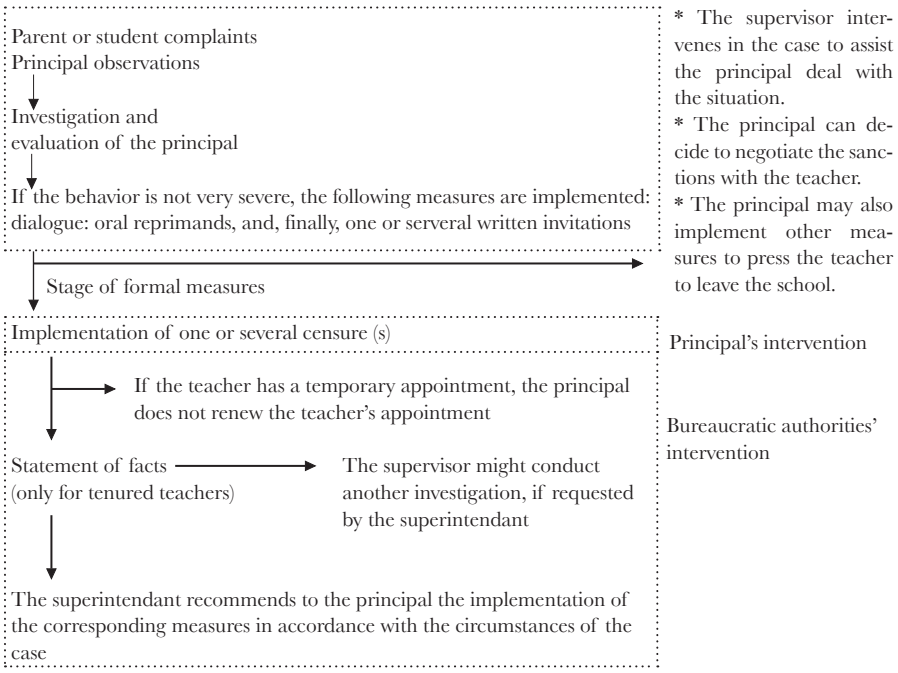
E. *Other Types of Misconduct*

In this case, the resolution process begins with dialogue. During this period, the principal expects the teacher to explain the reasons for the alleged misbehavior. Depending on the teacher's reaction, the principal may decide to issue a verbal warning; by so doing, the teacher is warned that if the alleged misbehavior is not heeded, the principal shall be prepared to implement further measures. If the teacher continues to misbehave, then the principal may adopt stricter measures depending on the circumstances of each particular case, including the type of appointment held by the teacher or the teacher's response after discussion with the principal. In general, the procedures always begin with a written reprimand or censure. Some principals, depending on the number of times the teacher has broken the rules, may issue more than one reprimand or censure.

Following these measures, the next step taken by the principal depends on the teacher's appointment: if the contract is temporary, the principal may simply decide not to renew the contract. If the teacher holds a permanent

position, the principal initiates the termination process by submitting a statement of facts to the superintendent. The statement of facts normally includes a detailed list of the teacher's alleged misbehavior, as well as testimony of both eyewitnesses and the offended party. After evaluating the statement of facts, the superintendent recommends an appropriate disciplinary measure. Principals can also implement other measures to "push" the teacher out of school; for instance, assigning excessive amounts of work or simply segregating the teacher within the school. In these cases, the principal is free to negotiate sanctions with the teacher in order to encourage him to opt for early retirement or voluntary transfer to another school. Figure 6 portrays the procedures mentioned in this paragraph.

FIGURE 6. PRINCIPALS' RESPONSES IN MISCONDUCT CASES



These cases are normally resolved using informal measures in order to avoid the voluminous amount of time and effort necessary to realize the statement of facts and administrative hearing. Since the cost of these procedures can be exorbitant, the principal usually only performs these tasks when the teacher is likely to be removed as a consequence of the formal measures; or, alternatively, when the teacher's behavior can no longer be tolerated. Because these cases seldom pass the standards established by the bureaucratic authorities, the superintendent rarely recommends an administrative hearing after reviewing the statement of facts.

F. *Sexual Abuse and Sexual Harassment*

After the principal is notified of the teacher's misbehavior, she often requests the supervisor to support her in handling the case. At that point, the principal initiates a careful investigation to determine whether or not the teacher has actually committed the offense. If the principal determines that the accusation is justified, he may either opt to reconcile the parties to help them reach agreement; or initiate the termination process by drafting a statement of facts. Most principals opt for the former option.

If the principal decides to reconcile the conflict, the teacher must make a written commitment in exchange for a promise by the principal and parent to not take any further measures or drop any prior complaint. This commitment usually includes the teacher's promise to avoid contact with the student or, at the least, avoid offending the student again. It also obliges the teacher to accept a transfer —if not immediate then as soon as possible— to another school.

If the principal carries out the statement of facts, then she has to wait for instructions from the superintendent. If the superintendent recommends that the principal conduct an administrative hearing, this procedure must be realized as soon as possible. After the administrative hearing, the superintendent can order the teacher's temporary suspension. Aside from the superintendent, outside education authorities (*e.g.*, the UAMASI or police) rarely intervene. The superintendent also plays an essential role, since he has the authority to decide whether the principal must realize an administrative hearing or transfer the teacher to another school.

Figure 7 shows the procedures used by principals to deal with cases involving sexual abuse or sexual harassment.

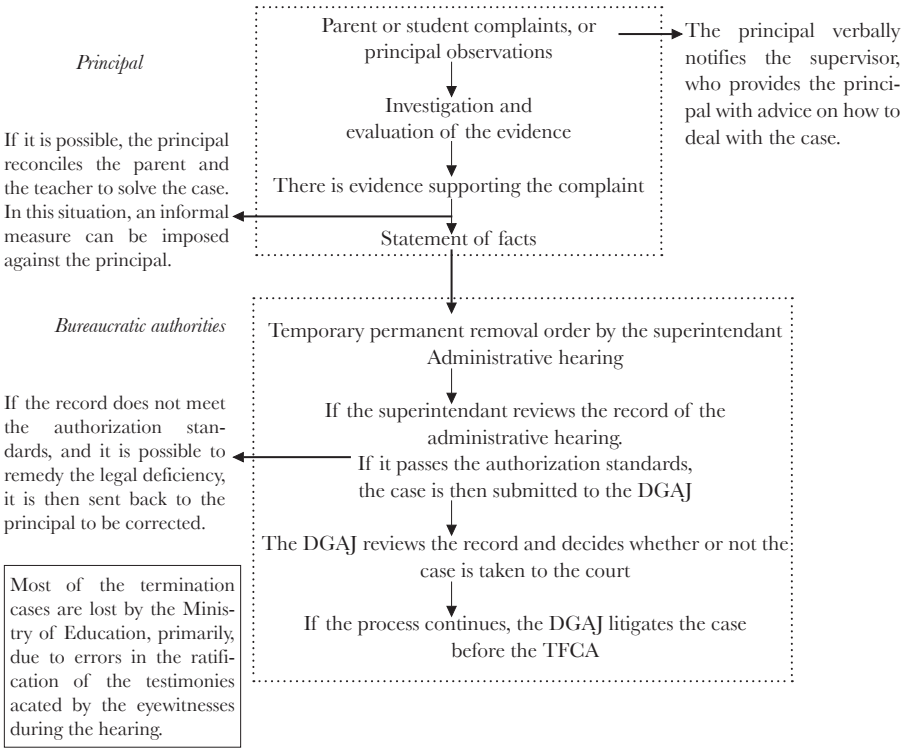
As depicted in Figure 7, the principal always first attempts reconciliation as an informal and cost-effective way to resolve this type of case. Principals generally try to remove these teachers by pressuring them to accept a transfer during the reconciliation period. Principals showed a preference to transfer the teacher to another school instead of implementing formal procedures with a very low chance of success. In fact, the TFCA failed to authorize termination in 63% of the cases in which the SEP made such request between 1979 and 2007.[39]

Principals in Mexico deal with these cases in a completely different way than principals elsewhere. In the U.S., for example, teachers who sexually abuse or harass students are treated to the full extent of the law. To begin with, the police usually intervene at the early stages of the resolution process (*i.e.* once the complaint has been filed). If the allegation is proven, the teacher faces not only termination but also criminal charges.[40]

[39] Source: Statistics Department of the TFCA.

[40] Jeff Horner, *A Student's Right to Protection From Violence and Sexual Abuse in the School Environ-*

FIGURE 7. PRINCIPALS' RESPONSES IN CASES INVOLVING SEXUAL ABUSE OR SEXUAL HARASSMENT COMMITTED BY TENURED TEACHERS



IV. RECOMMENDATIONS

The *Sindicato Nacional de Trabajadores de la Educación* (SNTE) [Mexican National Educational Workers Union] was founded in 1944. In 1946, two years after its founding, the SNTE signed an agreement with the government that established the criteria used on a national basis for decades: the *Reglamento de las Condiciones Generales de Trabajo de la Secretaría de Educación Pública* (RCGT) [General Conditions for the Personnel of the Ministry of Education].[41] The RCGT granted teachers advantageous labor conditions, especially tenured teachers. Taking advantage of both its privileged regulatory framework (*i.e.* RCGT), the union has been able to implement a bureaucratic and legal structure that protects its own interests first. This maze of regulations and rules has

ment, 36(1) SOUTH TEXAS L. REV. 45-57 (1995), and Jason P. Nance & Daniel Philip T.K., *Protecting Students from Abuse: Public School District Liability for Student Sexual Abuse Under State Child Abuse Reporting Laws*, 36(1) JOURNAL OF LAW AND EDUCATION 33-63 (2007).

[41] Secretaría de Gobernación [SEGOB] [Ministry of the Interior], *General Conditions for the Personnel of the Ministry of Education* (México, 1946).

put the interests of the union and its members over the interests of the educational system as a whole. As long as this system continues, it is unrealistic to expect any meaningful structural reform.

After analyzing how public secondary school principals in Mexico City handle underperformance cases, this section points out several recommendations intended to improve the current situation. As the examples in section III clearly show, the most common way that principals deal with teacher underperformance is by engaging in informal mechanisms. The main reason explaining this is their lack of training to handle them in a proper and formal manner. For this reason, the three recommendations below focus on policies designed to help train principals for dealing with underperformance cases.

1. *Improve Principals' Training*

As one principal mentioned, "I learned and practiced all the skills needed to be a principal when I started as a principal." In fact, there are no formal requirements or certification necessary in order to be a principal in Mexico. Once a teacher is appointed as assistant principal, she can remain in this position for several years before being appointed principal. In practice, the position of assistant principal is the best available opportunity for a teacher to learn how to manage a school. Several circumstances, however, might prevent an assistant principal from acquiring these skills. The first is the unwillingness of the principal to delegate authority to his or her assistant. Some principals perceive this delegation as a threat to their authority. Second, a principal might have a poor personal or professional relationship with the assistant principal. In these cases, the principal tends to isolate the assistant principal by assigning only administrative duties; in most cases, the supervisor is eventually asked to remove the assistant principal from the school.

I propose two measures designed to improve principals' training. This training must cover, among other topics, techniques to supervise teacher performance in the classroom; negotiation and conciliation techniques; and the legal framework that governs middle school organizations, including the rules that regulate teacher performance. This training program could be administered by the Teacher Centers[42] and evaluated by an exam given by the *Exámenes Nacionales para la Actualización de los Maestros en Servicio* (ENAMS) [National Exams for the Actualization of the In-Service Teachers].[43] Second, the teacher supervisors and superintendents must help ensure that the principal and assistant principal collaborate in the administration of the school, which also means that the principal agree not to treat the assistant principal as an administrative employee.

[42] Teacher Centers are educational institutions that provide training for in-service teachers.

[43] The ENAMS are annual evaluations applied to teachers who enroll in a course offered by the Teacher Centers.

2. *Improve the Legal Advice Given to Principals in Teacher Underperformance Cases*

Tenured teachers can only be terminated by a legal decision issued by the TFCA. The educational authorities rarely conduct the procedures necessary to terminate underperforming teachers. As many principals have stated in regard to the transfer of underperforming teachers: "We never solve the problem, we just transfer it to another school." In fact, a transfer is an outrageous way to resolve cases involving sexual abuse, sexual harassment, gross misconduct or any other type of egregious misbehavior. In sum, although transfers are far from ideal for dealing with teacher misconduct, educational authorities often have no other choice: formal mechanisms are difficult if not impossible as a result of regulations that overly protect tenured teachers and involve highly complex and time-consuming procedures.

There are two feasible ways to deal with these obstacles. First, superintendants could be made responsible for assisting principals in legal matters. This should be carried out by an individual assigned to assist the superintendant with both a law degree and experience in the practice of administrative law. Second, the DGAJ should be more involved with principals when handling termination suits. The main reason why the SEP generally loses termination suits is because the testimonies appearing in the administrative hearing records are often never properly ratified. These ratification errors are mostly due to limited communication between SEP litigators and the principal who carried out the administrative hearing.[44]

3. *Improve Mechanisms to Evaluate Teacher Performance in the Classroom*

Since there are no legal standards established to measure teacher performance in the classroom, teacher supervisors often lack clear criteria to properly evaluate whether teachers adequately perform their duties. For this reason, an adequate standard must be established based on several factors, including the teachers' ability to impart their subject matter to students. As the OECD[45] pointed out, educational quality must be based upon diverse factors, particularly the following: 1) teacher qualifications, including credentials, experience, degrees, certifications and all other relevant professional development; 2) teacher characteristics and in-classroom practices, such as attitudes, expectations, personal characteristics, strategies, methods and actions employed by teachers both in the classroom and during interaction with

[44] Principals interviewed for this paper state that once the administrative hearing has been realized, they rarely find out about the status of the termination procedure or the reasons why a case is not taken by the DGAJ to the TFCA.

[45] OECD, *Evaluating and Rewarding the Quality of Teachers* at 14 (2009).

students; and 3) teacher effectiveness, as an assessment of the degree to which teachers can contribute to the learning outcomes of students.[46]

Clarifying this legal standard would allow both principals and teacher supervisors to better perform their supervisory duties. This paper suggests that an intelligent education strategy be established that clearly defines standards for adequate classroom performance without the need to amend the RCGT. Although the RCGT can be improved by clarifying the meaning of the terms *quality* and *intensity*, the SNTE will strongly oppose any such change. As a result, an alternative legal strategy must be developed based on a system that assures both quality assurance and professional development. As Danielson claims, though, most evaluation systems fail to do this because "evaluation is either neglected altogether or conducted in a highly negative environment with low levels of trust."[47]

In order to improve teacher performance in the classroom, principals should avoid spending such an enormous amount of time on administrative duties by relying more on administrative personnel to realize administrative tasks. By so doing, they are better able to allocate additional time to the supervision of teacher performance. Pursuant to Marshall,[48] an evaluation system must not only evaluate a very small part of all the teaching process: when this occurs, the lessons that principals evaluate are often atypical, and they present an incomplete picture of instruction. In sum, principals should not spend so much time on administrative tasks; as the proper evaluation of teacher performance requires an investment of considerable time and effort.[49]

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[46] Koedel and Betts have shown that although teacher quality is an important contributor to student achievement, teacher qualifications are only weakly-related to outcome-based measures of teacher quality (such as scores of standardized exams). For this reason, a deeper analysis is needed to help determine which factors best indicate teacher quality in Mexico. See Cory Koedel & Julian Betts, *Re-Examining the Role of Teacher Quality in the Educational Production Function* 49 (2007) (Working paper, University of Missouri).

[47] Charlotte Danielson, *New Trends in Teacher Evaluation,* 58 (5) Evaluating Educator 12-15 (2001).

[48] Marshall, Kim, *It's Time to Rethink Teacher Supervision and Evaluation,* 58 (10) Phi Delta Kappan (2005).

[49] Garcia et al. have demonstrated that principals in a northern state of Mexico spend most of their time on administrative work, making it impossible for them to spend adequate time on issues involving teacher underperformance. See José García, Charles Slater & Gema López, *Director escolar novel de primaria,* 15(47) Revista Mexicana de Investigación Educativa 1051-1073 (2010).

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