

AN OVERVIEW OF THE RULES GOVERNING THE PERFORMANCE OF PUBLIC MIDDLE SCHOOL TEACHERS IN MEXICO CITY*

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ABSTRACT. *Rules governing the performance of public middle school teachers in Mexico City are contained in a myriad of regulations, a fact which leads to certain difficulties in understanding them. This article analyzes them based on a detailed review of the relevant laws and interviews with the public officers who enforce these provisions. Teacher performance rules are divided into three groups depending on the type of activity regulated: performance in the classroom, discipline, and attendance/punctuality. The comment also provides a brief explanation of the remedies for sanctions imposed on teachers by the educational authorities, and explains the nature of the termination lawsuit before the Federal Court of Conciliation and Arbitration.*

KEY WORDS: *Middle school, Mexico City, teacher performance, termination, rules.*

RESUMEN. *Las reglas que regulan las funciones de los docentes que laboran en secundarias públicas en México se encuentran en diversas disposiciones, lo que hace complicado entenderlas. Con base en una revisión detallada de las leyes relevantes, así como de acuerdo con diversas entrevistas realizadas con funcionarios encargados de aplicar tales leyes, el presente artículo analiza dichas reglas, las cuales se dividen en los siguientes tres grupos, dependiendo del tipo de actividad regulada: desempeño en el salón de clase, disciplina, y asistencia/puntualidad. Asimismo, brinda una breve explicación sobre las acciones legales que pueden interponerse en contra de las sanciones aplicadas a los docentes, y explica el juicio de cese ante el Tribunal Federal de Conciliación y Arbitraje.*

PALABRAS CLAVE: *Secundarias, Distrito Federal, desempeño docente, cese, leyes.*

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I. INTRODUCTION

Middle school teachers in Mexico work under a special —and difficult to understand— labor law regime. Not only are the corresponding provisions spread throughout different federal statutes and administrative regulations,¹ but some of their aspects do not appear to make sense as they were published at very different times (the first in 1946 and the most recent in 2008). Furthermore, the procedures for implementing the rules (especially disciplinary measures) are obscure and give no explanation as to who is responsible for enforcing them.

From a legal point of view, there are two main factors that can explain the complexity of the labor regime of public middle school teachers in Mexico City. First of all, Mexico City is the only jurisdiction that has not been decentralized. Therefore, the Federal Ministry of Education (SEP) is directly responsible for providing public education services in this district.² Second, although public middle school teachers in Mexico City are legally considered federal employees, details regarding their working conditions are actually contained in several regulations, many of which are administrative regulations issued by the SEP or dependent agencies. Due to these factors, understanding the legal framework that regulates the performance of teaching staff is complicated. The goal of this essay is to clarify this legal framework by presenting it in a way that is useful and easy for educational officers and researchers to understand.

This note focuses on studying the rules governing the performance of general middle school teachers in Mexico City. “Basic education” comprises three levels: preschool, elementary and middle school education.³ There are four types of public middle schools: general middle schools, tech-

¹ Although there is a state statute containing some provisions regarding the working conditions of public school teachers in Mexico City, these provisions do not appear to actually be taken into consideration or implemented by the corresponding educational authorities. Due to this, these provisions are excluded from the analysis presented in this essay. See *Ley de Educación del Distrito Federal* [L.E.D.F.] [General Education Act], *Gaceta Oficial del Distrito Federal*, 8 de junio de 2000 (Mex.).

² See *Ley General de Educación* [L.G.E.] [General Education Act], provisional section number 4, *Diario Oficial de la Federación* [D.O.] 13 de julio de 1993 (Mex.) [hereinafter *L.G.E.*].

³ Section 37 of the L.G.E.

nical middle schools, middle schools for workers and distance education middle schools (*telesecundarias*). When the term *middle school(s)* is used during this manuscript, I am referring to *general middle school(s)*. Regardless of the type, middle school covers three years of education. On completing elementary school, students can be admitted to a general middle school if they are between 11 and 15 years of age. In the school year 2006-2007, and according to the *Administración Federal de Servicios Educativos en el Distrito Federal* (AFSEDF) [Federal Administration for Educational Services in Mexico City], general middle schools comprised the largest number of students in Mexico City, as well as the largest number of teachers: 262,527 students and 13,937 teachers.⁴

For the purpose of analyzing teacher performance rules, I divide them into three categories: classroom performance, teacher discipline and finally, attendance and punctuality. Using these conceptual subcategories will make it much easier to understand the legal framework and order the relevant provisions.

Besides reviewing the relevant legal provisions, this note is also based on interviews with the following educational authorities: four Mexico City middle school superintendants⁵, two judges from the *Tribunal Federal de Conciliación y Arbitraje* (TFCA) [Federal Tribunal of Conciliation and Arbitration], lawyers working at the Dirección General de Asuntos Jurídicos (DGAJ) [General Office of Legal Affairs], as well as union representatives and private lawyers who represent teachers in termination cases. Most of these interviews were carried out between July and December 2008. All of these individuals participated voluntarily and were ensured of confidentiality. A database with information on the lawsuits presented before two TFCA courts between 1997 and 2008 has also been used as source material.

This note has two substantive sections: Section II describes the institutional framework of middle schools in Mexico City and Section III explains teacher performance rules. The conclusions (IV) are presented at the end.

II. THE ORGANIZATION OF MIDDLE SCHOOLS IN MEXICO CITY

1. *The Federal Administration for Education Services in the Mexico City District, the Sector Coordinating Office for Middle School Education, the Superintendants and School Districts*

The *Administración Federal de Servicios Educativos en el Distrito Federal* (AFSEDF) [Federal Administration for Education Services in Mexico City] is a

⁴ AFSEDF, PRONTUARIO ESTADÍSTICO. INICIO DE CURSOS 2006-2007, 109 (2006).

⁵ I use the term “superintendent” to refer to the “*director operativo*”, who is the officer that heads the operative directorate. For a detailed explanation of the superintendent’s role, see section II.2.

semi-independent (“*organismo descentralizado*”) administrative agency governed by the SEP. The AFSEDF’s main goal is to provide “basic” educational services in Mexico City.⁶ Two AFSEDF branches manage educational services: the *Dirección General de Orientación y Servicios Educativos* (DGOSE) [General Office for Supervision and Educational Services] and the *Dirección General de Servicios Educativos Iztapalapa* (DGSEI) [General Office of Educational Services for Iztapalapa]. The DGOSE manages the basic educational services for all of Mexico City’s boroughs, except that of Iztapalapa, where it is overseen by the DGSEI.

The DGOSE is divided into several branches. The office in charge of middle school operations is the *Coordinación Sectorial de Educación Secundaria* (CSES) [Sector Coordinating Office for Middle School Education], which is made up of seven Operative Directorates (OD), each headed by a superintendent.⁷ In general, ODs perform several tasks related to the operation of middle schools in their corresponding territorial jurisdictions (*i.e.* Mexico City boroughs). The DGSEI consists of four regional units, each of which performs the same tasks as an OD. Every OD has a Legal Assistance Office (LSO) to assist principals on legal matters related to running the school, including legal counsel in underperformance cases. Every middle school in Mexico City belongs to a school district based on its location. Every school district is headed by a supervisor.⁸

2. *The Internal Organization of Middle Schools*

The internal middle school organization is mainly regulated by the Organization Manual for General Middle Schools and *Telesecundarias* in Mexico City⁹ and the General Provisions and Guidelines for the Organization of the Operation of Basic, Initial, Special and Adult Education Services in Mexico City.¹⁰ Based on these provisions, the organization of middle schools in Mexico City is shown in Figure 1.

⁶ The AFSEDF structure is provided in the AFSEDF, *Manual General de Organización de la Administración Federal de Servicios Educativos del Distrito Federal* [M.G.O.A.F.] [General Federal Administration of Education Services in Mexico City Organization Manual], *Diario Oficial de la Federación* [D.O.], 23 de agosto de 2005 (Mex.) [*hereinafter* M.G.O.].

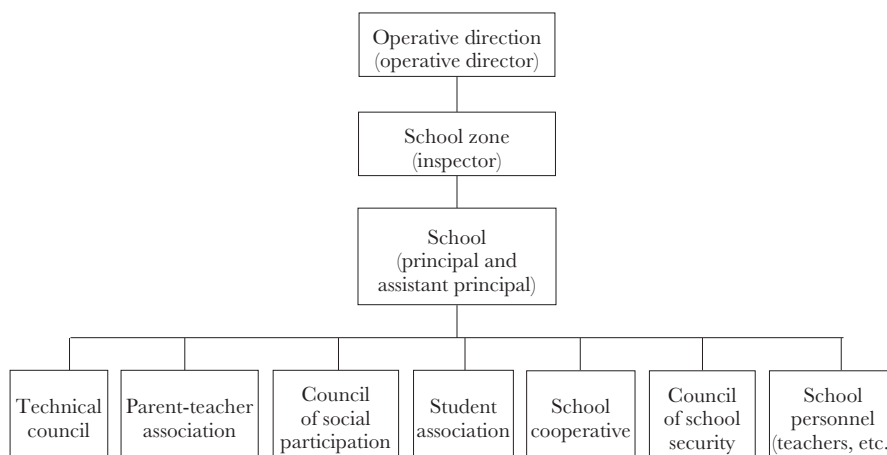
⁷ See *supra* note 5.

⁸ I use the term supervisor as a mere convenience to refer to the *inspector*. For a detailed explanation of the supervisor’s role, see section II.2.

⁹ *Manual de Organización de la Escuela de Educación Secundaria y Telesecundaria en el Distrito Federal* [M.O.E.E.S.T.D.F.] [Manual for the Organization of the General Middle Schools and Telesecundarias in Mexico City] SEP, 2000 [*hereinafter* M.O.].

¹⁰ *Disposiciones y lineamientos generales para la organización y funcionamiento de los servicios de educación básica, inicial, especial y para adultos en el Distrito Federal, 2008-2009* [2008-2009 General Provisions and Guidelines for the Organization of the Operation of Basic, Initial, Special and Adult Education Services in Mexico City], AFSEDF, 2008 [*hereinafter* L.G.].

FIGURE 1. THE ORGANIZATION OF GENERAL MIDDLE SCHOOLS IN MEXICO CITY



The highest authority, the superintendant, is responsible for running the middle schools located in his/her territorial jurisdiction. The supervisor is the next in the chain of command, followed by the principal and the assistant principal. Other school organizations play an important part in running the school, especially the Technical Council (TC), the Parent Association (PA) and the Social Participation Council (CSP). These bodies are governed by the M.O. and the L.G. The TC is a collegial body formed by teachers, the assistant principal and the principal to advise the principal on certain issues, particularly those concerning underperforming teachers or undisciplined students. The PA is composed of parents who work with school personnel in performing school activities. The CSP, which comprises parents, teachers, union representatives, alumni and the principal, is responsible for carrying out activities that promote better school-community relations.

3. *The General Office of Legal Affairs of the Ministry of Education*

Two DGAJ directorates, the *Dirección de Calificación de Actas* (DCA) [Department of Evaluation of Administrative Hearings Records] and the *Dirección de Procesos Legales* (DPL) [Department of Labor Processes], play an important role in the termination lawsuits. When the act committed by the teacher can lead to a termination lawsuit, the principal can initiate the termination process by holding an administrative hearing at the school. A record of these proceedings is then filed with the DCA to be reviewed and to determine whether a termination lawsuit should be initiated against the

teacher. If the DCA decides against a lawsuit, the DCA issues a written opinion justifying its decision and submits the case to the DPL. The DPL has the authority to impose disciplinary measures against the teacher depending on the circumstances¹¹ Disciplinary measures can be any of the following: a written reprimand, a censure, a “negative disciplinary score,”¹² a salary discount, unpaid suspension or an order for the teacher’s permanent removal from the school.¹³ The DGAJ is not part of the AFSEDF, but reports directly to the SEP.

4. *The SEP Comptroller’s Office*

As federal civil servants, general middle school teachers are subject to the rules contained in the Federal Act of the Administrative Responsibilities of Civil Servants (L.F.R.A.S.P.).¹⁴ The SEP Comptroller’s Office is responsible for enforcing these provisions, especially the obligations stated in Section 8 of the L.F.R.A.S.P.¹⁵

5. *The National Teachers Union*

The *Sindicato Nacional de los Trabajadores de la Educación (SNTE)* [National Teachers Union] is one of the most powerful organizations in Mexico.¹⁶ The *Estatutos del Sindicato Nacional de Trabajadores de la Educación (ESNTE)* [National Teachers Union Bylaws], issued by the SNTE in 2004, governs SNTE operations. Section 11 of the ESNTE states that all those involved in education services in Mexico are SNTE members, regardless of the their position or status (whether a current employee, a retiree or a pensioner).

¹¹ Section 82 of the *Reglamento de las Condiciones Generales de Trabajo del Personal de la Secretaría de Educación Pública* [General Conditions for the Ministry of Education Personnel], D.O., 29 de enero de 1946 [*hereinafter R.C.G.T.*].

¹² As it is explained below, a teacher receives a “Negative disciplinary score” when he/she breaks disciplinary rules. This is not necessarily related to her/his pedagogical performance as a teacher.

¹³ These measures are established in Section 71 and 55 of the R.C.G.T.

¹⁴ *Ley Federal de Responsabilidades Administrativas de los Servidores Públicos* [Federal Act of the Administrative Responsibilities of Civil Servants], D.O., 21 de agosto de 2006 [*hereinafter L.F.R.A.S.P.*].

¹⁵ The AFSEDF also has an Office of the Comptroller, the functions of which are established in the M.G.O. From a purely legal perspective, the OIC and the AFSEDF Comptroller’s Office have similar responsibilities. In practice and according to the superintendents, the OIC seems to have taken on a more active role in enforcing L.F.R.A.S.P. regulations.

¹⁶ For a more detailed description of the SNTE’s importance in the Mexican political arena, *See*: RICARDO RAPHAEL, *LOS SOCIOS DE ELBA ESTHER* (2007).

According to Section 14 of the ESNTE, members are obligated to support the SNTE by paying a membership fee of 1% of their monthly salary. This money is managed by the SNTE National Executive Council under the guidelines set forth in Sections 18, 22 and 24 of the ESNTE.

According to Section 29 of the ESNTE, all teachers assigned to a designated school form a work center and have the right to elect their union representatives every three years. Section 40 of the ESNTE states that a teacher must have been a SNTE member for at least one year before becoming an elected union representative. Section 42 stipulates that union representatives cannot be reelected for consecutive terms. Sector union representatives can also defend teachers in labor matters, but the two most important union positions are that of secretary general and secretary of labor affairs, as they assist teachers in labor conflicts, usually by interceding on their behalf.

Today, the SNTE is divided into 59 sections, which include all teachers nationwide. Sections 35, 36 and 37 of the ESNTE regulate union sector organization. In Mexico City, there are four sectors: 9, 10, 11 and 43. General middle school teachers are members of Section 10. Union representatives working at sections are named sector union representatives. Unlike school union representatives, sector union representatives only have to perform SNTE-related tasks and do not have any teaching duties. Any sector union representative has the power to assist teachers facing labor issues.

III. RULES GOVERNING TEACHER PERFORMANCE IN GENERAL MIDDLE SCHOOLS IN MEXICO CITY

The most important set of provisions governing general middle school teacher performance is the *Reglamento de Condiciones Generales de Trabajo para el Personal de la Secretaría de Educación Pública (R.C.G.T.)* [General Conditions for Ministry of Education Personnel], enacted in January 1946. Other relevant regulations are the M.O., the Ministry of Education Agreement Number 98¹⁷ and the L.G.

The R.C.G.T. states the rights and obligations of the personnel working for the SEP, as well as the sanctions for those who do not comply with these rules. According to Section 87 of the L.F.T.S.E.,¹⁸ the R.C.G.T. should be modified by an agreement between the SNTE and the SEP every three

¹⁷ *Acuerdo secretarial número 98, que establece la organización y funcionamiento de las escuelas de educación secundaria* [Ministry of Education Agreement Number 98, which establishes the rules governing the organization and operation of general middle schools], D.O., 7 de diciembre de 1982 [*hereinafter Agreement 98*].

¹⁸ *Ley Federal de los Trabajadores al Servicio del Estado* [Federal State Workers Act], D.O., 28 de diciembre de 1963 [*hereinafter L.F.T.S.E.*].

years; however, the R.C.G.T. has not undergone any changes since its creation in 1946. In 2000, the SEP issued the M.O. that describes the functions of the collegial bodies in middle schools, such as the TC and the PA. The M.O. also details the functions of the school personnel, such as supervisors, teaching supervisors, principals, assistant principals and teachers. To a certain extent, Agreement 98 and the M.O. cover the same issues, and in some cases, the provisions contained in both are either exactly the same or quite similar. The L.G., which contains the rules governing teachers' work and general middle school operations, is published by the AFSEDF every school year.

1. *Different Types of Appointments and Promotion Mechanisms*

A. *Types of Teacher Appointments*

The type of appointment for middle school teachers is important because it determines whether the teacher has access to the promotion system or to the teacher incentive program known as *Carrera Magisterial* (CM). According to Section 9.1 of the *Manual para la Administración de Recursos Humanos de la Secretaría de Educación Pública* (M.N.A.R.H.) [Ministry of Education's Human Resources Administration Manual], an appointment consists of assigning a position to an individual working for the SEP by issuing a document called an appointment certification, formalizing the labor relationship between the teacher and the SEP. Section 3.9 of the M.N.A.R.H. describes the different types of appointments a SEP worker can hold as summarized in the following table.

TABLE 1. APPOINTMENTS FOR TEACHERS WORKING
IN GENERAL MIDDLE SCHOOLS

<i>Type of appointment</i>	<i>Appointment Level</i>	<i>Definition of the appointment</i>	<i>Legal provision</i>
Permanent	Initial, Level 09	Granted to an individual to fill a newly created position or a vacant definitive (Level 10) position.	Section 16 and 17 of the R.C.G.T.
Temporary	Interim, Level 20	Granted to an individual to temporarily fill a definitive (Level 10) position for a period no longer of 6 months.	Section 63 of the L.F.T.S.E and sections 17 and 18 of the R.C.G.T.
Permanent	Provisional with formal occupant, Level 95	Granted to an individual to temporarily fill a definitive (Level 10) position held by another teacher for more than 6 months.	Section 64 of the L.F.T.S.E, and sections 20 and 23 of the R.C.G.T.

TABLE 1. (continued...)

<i>Type of appointment</i>	<i>Appointment Level</i>	<i>Definition of the appointment</i>	<i>Legal provision</i>
Permanent	Provisional without formal occupant, Level 95	Granted to an individual to temporarily fill a definitive (Level 10) position that is not held by another teacher for more than 6 months.	Section 64 of the L.F.T.S.E, and sections 20 and 23 of the R.C.G.T.
Temporary	Provisional, Level 97 (renewal of the appointment is required)	Granted to renew the term of a previous temporary appointment (either Level 20 or 97).	No legal provision.
Permanent	Tenure, Level 10	Granted to an individual after 6 months of filling an initial position (Level 09).	Section 6 of the L.F.T.S.E and section 19 of the R.C.G.T.

While there are temporary and permanent appointments, for the purposes of this article I will refer to teachers with temporary appointments as temporary teachers, and to teachers with permanent appointments as tenured or permanent teachers. There are two main differences between these two categories. First of all, a temporary teacher must have the principal renew her/his appointment after a certain period of time. Hence, the principal has the choice not to renew it if she/he is not satisfied with the teacher's performance. In contrast, a tenured teacher can only be fired by means of a complex termination process that starts with an administrative hearing and ends with the TFCA's decision to terminate the teacher. The second difference is that a temporary teacher does not have access to the promotion system or the CM. Thus, a temporary teacher has a limited number of ways to improve her/his working conditions and salary.

B. The Promotion System

The SEP promotion system is governed by the Ministry of Education Personnel Promotion System Regulations,¹⁹ Section 1 of the R.E.T.S.E.P. establishes the SEP's authority to grant its teachers promotions. Section 10 of the R.E.T.S.E.P. states that only teachers with a Level 10 appointment are eligible to be included in the promotion system, thus excluding teachers with any other type of appointment. The CNME is the agency in charge of the promotion system. Once a teacher submits her/his application to participate in the promotion system, the principal fills out an Annual Evaluation Report (AER) for the teacher at the end of each school year. The AER

¹⁹ *Reglamento de Escalafón de los Trabajadores al Servicio de la Secretaría de Educación Pública* [R.E.T.S.E.P.] [Ministry of Education Personnel Promotion System Regulations] Comisión Nacional Mixta de Escalafón, 1974 [hereinafter *R.E.T.S.E.P.*].

evaluates three aspects of each teacher's performance during a school year. The first factor is the teacher's ability, which is in turn divided into three parts: the teacher's initiative in her/his job (75 points); the teacher's willingness to do her/his duties (125 points), and finally, the teacher's efficiency (280 points). The second factor is teacher discipline (120 points), and finally, punctuality (120 points). Thus, the highest score a teacher can obtain on her/his AER is 720 points. A poor AER score only affects Level 10 teachers since they are the only ones who can participate in the promotion system.

For it to be legally valid, the AER must be signed by the principal, the school union representative and the academic supervisor. When a principal does not assign 720 AER points to a teacher, the principal must present evidence explaining the poor score. If no evidence is provided, the school union representative or teaching supervisor can refuse to sign the AER until the score is amended or the principal provides the corresponding evidence.

C. *Carrera Magisterial*

The CM is a promotion system in which individual teachers participate voluntarily to receive additional compensation if they meet the requirements. The rules governing the CM are the *Lineamientos de Carrera Magisterial* (L.C.M.), [Carrera Magisterial Guidelines], issued by the National SEP-SNTE Commission on March 6, 1998.

Only permanent teachers can be included in the CM. Section 4 of the L.C.M. states that the CM is divided into five economic compensation levels: A, B, C, D and E (with A as the lowest level). Each level represents a significant improvement in teacher salary and can be accumulated. For example, a middle school teacher with a 25-hour appointment receives 9 hours compensation at level A, 8.5 hours at level B, 8 hours at level C, 7 hours at level D, and another 7 hours at level E. Therefore, a level E teacher is paid an additional 64.5 hours for 25 hours of work.

Every year, the official CM promotions announcement is issued. Teachers who want to be admitted into the first level or promoted to the next level submit their applications for review. After being promoted to a particular level (including level A), she/he remains at that level for a given number of years, depending on whether the teacher works in a rural, urban or low-development area. The years of permanency for teachers in urban and rural areas are: 3 years in level A, 3 years in level B, 4 years in level C and 4 years in level D. Teachers working in low-development areas stay at each level for a period of 2 years.

Section 6 of the L.C.M. governs the CM evaluation process. Once a teacher submits her/his application, these criteria are used to determine whether the teacher is admitted into the CM (*i.e.* level A) or promoted to

the next level. A teacher can obtain a maximum score of 100 points, assigned as follows: 10 points for tenure, 15 points for the teacher's academic achievement, 28 points for professional preparation, 17 points for teacher training, 10 points for professional performance and 20 points for student achievement. Points for tenure are proportional to the number of years a teacher has worked in the SEP. Points for academic achievement depend on the teacher's highest level of education: 9 points for a bachelor's degree or a teacher's degree from a teachers' college, 12 points for a master's degree and 15 points for a doctorate. Points for professional preparation are given based on a SEP-administered exam and reviewed by the National SEP-SNTE Commission. The exam focuses on evaluating the academic content and abilities teachers need to perform their job. By taking the courses offered by local education authorities, teachers can be awarded teacher training points and student achievement points are obtained from students' scores on an exam administered on the dates stipulated by the National SEP-SNTE Commission.

The mechanism used to evaluate the Professional Performance Factor (PPF) deserves separate mention due to the principal's role in determining the points assigned to the teacher. The Evaluation Body (EB), a group consisting of the TC, the school union representative and the principal, is responsible for observing certain aspects of teacher performance to assess the PPF. Because the principal is the president of the EB, she/he holds the most influence in determining the points assigned to the teacher.

2. Teacher Performance in the Classroom: Rules and Sanctions

A. Rules

The rules governing teacher performance in the classroom are contained in the Agreement 98, the M.O. and the L.G. The obligations set forth in these regulations are often repeated, sometimes even verbatim. Teachers' responsibilities can be divided into five categories: lesson planning, teaching, student evaluation, participation in school academic activities, and performance in certain tasks assigned to them by the principal. The following paragraphs explain these responsibilities in further detail:

- 1) *Lesson planning.* The M.O. states that teachers should draw up an Annual Work Plan (AWP) and a Didactical Sequence (DS).²⁰ The AWP consists of the course content to be taught during the school year. The

²⁰ The AWP not only contains the topics that will be covered during the school year, but also the techniques that will be used to teach them. The DS is similar to a lesson plan for every one of the classes.

DS lists the material to be covered in each class, as well as activities and homework. Both the AWP and the DS must be submitted to the principal for review within the first months of the school year. According to Section 83 of the L.G., the teacher must give students a test in the first days of the school year to measure their level of prior knowledge on the subject.

- 2) *Teaching*. First, the teacher must follow a methodology that promotes student participation in the learning process and use teaching materials based on current Study Plans and Programs (SPP).²¹ Both the methodology and teaching materials should be included in the DS.²² According to Section 24 of the L.G., teachers can request teaching materials that have been previously approved by the parents and the principal. Under no circumstances may the students be asked for expensive or hard-to-get teaching materials. Third, the teacher is required to tailor classroom activities to students' skills, interests and needs.²³ Fourth, the teacher should assign homework that corresponds to class content.²⁴
- 3) *Student evaluation*. In this category, the teacher's primary obligation is to evaluate what the students have learned by following the rules provided in the Ministry of Education Agreement Number 200 (Agreement 200).²⁵ Further obligations include the teacher's obligation to prepare the instruments needed for student evaluation by giving ordinary exams every two months and extraordinary exams for students who did not obtain passing grades during the school year.²⁶ Set forth in Section 82 of the L.G. the teacher's next obligation to take PPS recommendations for student evaluation into consideration. This provision also states that the teacher must tell the parents or guardians the aspects to be covered in the exams at the beginning of the school year.²⁷ Section 85 of the L.G. states that the teacher is required to hold at least five parent-teacher meetings every school year to inform parents or guardians of the test results.²⁸ The teacher's third obligation to keep student evaluation and attendance records up-to-date and

²¹ This responsibility is also mentioned by Section 23 (IV) of Agreement 98.

²² This is also stated in Section 23 (II) of Agreement 98.

²³ This obligation is also stated in Section 23 (V) of Agreement 98.

²⁴ See also Section 23 (VII) of Agreement 98.

²⁵ *Acuerdo secretarial número 200, que establece las normas de evaluación del aprendizaje en educación primaria, secundaria y normal* [Ministry of Education Agreement Number 200, which establishes the rules for evaluating students in elementary and middle schools and teachers colleges], D.O., 19 de septiembre de 1994 [hereinafter *Agreement 200*].

²⁶ See also Section 23 (V) of Agreement 98 and Section 81 of the L.G.

²⁷ The M.O. and Section 23 (X) of Agreement 98 state that the teacher has the obligation to promote parent participation in students' education.

²⁸ This responsibility is also found in Section 89 of the L.G.

that these records can be consulted by the principal or the assistant principal at any time.²⁹

- 4) *Participation in school activities.* Section 14 (VII) of Agreement 98 states that the teacher must participate in the meetings organized by the principal or assistant principal during working hours. The M.O. also lists attendance to TC meetings as a teacher obligation.³⁰ Section 88 of the L.G. mentions the teacher's obligation of participating in the meetings held after every evaluation period (*i.e.* bimonthly) to analyze student scores and attendance records.
- 5) *Participation in school commissions.* According to Section 14 (VIII) and 23 (XVII) of Agreement 98, as well as the M.O., the teacher must participate in the school's education-related commissions. In practice, the principal assigns these commissions at the beginning of the school year based on the amount of work each commission requires.
- 6) *Prohibitions.* Other provisions forbid teachers from giving private lessons regardless of whether or not they charge students for these services.³¹ According to Section 14 (XIII) of Agreement 98 and Section 29 of the L.G., teachers can only request materials or money (*i.e.* money for photocopying exams) from students when the parents and the principal have previously approved these items.

The following table summarizes rules regulating teacher performance in the classroom.

TABLE 2. RULES REGULATING TEACHER
PERFORMANCE IN THE CLASSROOM

<i>Type of duty</i>	<i>Description of the duty according to the law</i>	<i>Legal provision</i>
Lesson planning	The teacher must design a plan of the material to be covered in each class through the AWP and the DS. These lesson plans are submitted to the principal at the beginning of the school year.	M.O. and Section 23 (I) of Agreement 98.
Lesson planning	The teacher must evaluate the students at the beginning of the school year to measure their knowledge.	Section 83 of the L.G.
Teaching	The teacher must follow the proper methodological approach when teaching the students.	M.O. and Section 23 (III) of Agreement 98.
Teaching	The teacher can only use teaching materials specified in the PPS. The parents and the principal must approve these materials beforehand.	M.O., Section 23 (IV) of Agreement 98 and Section 24 of the L.G.

²⁹ The same obligation is contained in Section 74 of the L.G. and Section 23 (XI) of Agreement 98.

³⁰ See also Section 23 (XVI) of Agreement 98.

³¹ The M.O., Section 23 (IX) of Agreement 98 and Section 17 of the L.G.

TABLE 2. (continued...)

<i>Type of duty</i>	<i>Description of the duty according to the law</i>	<i>Legal provision</i>
Teaching	The teacher must adapt teaching activities to the students' circumstances, as well as the guidelines provided in the current PPS.	M.O. and Section 23 (V) of Agreement 98.
Teaching	The teacher must assign the students homework that related to the content taught.	M.O. and Section 23 (VII) of Agreement 98.
Evaluation	The teacher must evaluate students' learning process following the provisions contained in Agreement 200.	M.O., Section 23 (VI) of Agreement 98 and Sections 81 and 84 of the L.G.
Evaluation	The teacher must conduct periodical evaluation meetings with parents. In these meetings, the teacher must inform the parents of students' test results and explain the evaluation criteria.	M.O., Section 23 (X) of Agreement 98 and Sections 82 and 85 of the L.G.
Evaluation	The teacher must keep updated student evaluation and attendance records. These records can be consulted by the principal at any time. The teacher is obligated to grade homework and exams in a timely manner, and record the grades in an evaluation report.	M.O., Section 23 (XI) of Agreement 98 and Section 74 of the L.G.
Participation in school activities	The teacher must participate in all the school activities held at the school.	M.O., Sections 23 (XVI) and 14 (VII) of Agreement 98, and Sections 87 and 88 of the L.G.
Performance in school commissions	The teacher must participate in the school commissions assigned to him by the principal.	M.O., and Sections 14 (VIII) and 23 (XVII) of Agreement 98.

B. Sanctions

Several formal measures can be imposed on underperforming teachers, such as a poor AER score, a poor PPF score, non-renewal of an appointment (only when the teacher holds a temporary appointment), a censure or an underperformance note.

A teacher failing to perform her/his duties can receive a poor AER score, particularly in the skills section. A poor AER score only affects permanent teachers with a Level 10 appointment since they are the only ones who are part of the promotion system. A poor PPF score is another way of sanctioning underperforming teachers since it affects their general CM evaluation score.

The non-renewal of an appointment only applies to teachers with temporary appointments, which usually are made for a period of 6 months and are only renewed with the approval of the principal, the supervisor and the superintendent. The principal must back her/his motion for non-renewal by presenting evidence that the teacher is not fulfilling his/her duties. Proof is usually in the form of the school log with the supervisor's comments or

complaints filed by parents or students. When a principal does not renew an appointment, the supervisor and the superintendant need to verify the evidence. If the supervisor or the superintendant does not think the principal presented sufficient evidence, either official can request that the principal reconsider her/his decision or even renew the teacher's appointment. Union representatives (both at school and section levels) often invest considerable effort in trying to persuade the supervisor and the superintendant of the inadequacy of the evidence presented by the principal.

Section 25 (V) states that SEP teachers must "perform their duties with the required intensity and quality," but the concept of "required intensity and quality" is not defined.³² Because there is no legal standard by which to measure teacher performance in the classroom, supervising officials do not have clear criterion for evaluating teacher performance, further complicating the use of the disciplinary measures provided in the law, such as a censure or a negative disciplinary score.³³ Likewise, TFCA judges do not have a clear rule to ground their decisions on teacher underperformance. This might be one of the reasons why the judges interviewed said they have not seen a termination lawsuit presented solely on the grounds of underperformance in the classroom.

The following table summarizes the measures that can be taken in cases of underperformance in the classroom.

TABLE 3. FORMAL MEASURES THAT CAN BE IMPLEMENTED IN CASES INVOLVING TEACHER UNDERPERFORMANCE IN THE CLASSROOM

<i>Formal measure</i>	<i>Consequences of the formal measure imposed</i>	<i>Teachers that can be affected by the measure</i>	<i>Legal provision</i>
Poor CEA score	This affects the teacher's opportunity of being promoted.	Only teachers holding appointments code 10.	R.E.T.S.E.P.
Poor PPF score	This affects the teacher's opportunity of being promoted in the CM program.	Only teachers holding appointments code 10 or code 95-without-holder.	LCM.
Non-renewal of an appointment	The teacher's appointment is not renewed.	Only teachers holding appointments code 20 or 97.	No legal provision.
Censure or negative disciplinary score	The document is placed in the teacher's personnel file as evidence of her/his underperformance in the classroom.	All teachers regardless the appointment code.	Sections 25 (V), 71, 73 and 77 of the R.C.G.T.

³² Section 44 (I) of the L.F.T.S.E. contains the same principle.

³³ These sanctions are stated in Sections 71 and 77 of the R.C.G.T.

3. *Teacher Discipline: Rules and Sanctions*

A. *Rules*

Sections 25 and 26 of the R.C.G.T., as well as Section 46 (V) of the L.F.T.S.E. regulate teacher discipline. Sections 25 and 26 of the R.C.G.T. stipulate the obligations and prohibitions for SEP workers, including teachers, while Section 46 (V) of the L.F.T.S.E. outlines the grounds for terminating a civil servant for good cause.

Subsection VI of Section 25 of the R.C.G.T. notes teachers' obligation to obey the orders and instructions given by the school authorities (*i.e.* principal and assistant principal) for job-related matters. Subsection VII states that teachers must behave with discretion when doing their jobs. Subsection VIII refers to teachers' duty to treat the public courteously. According to Subsection IX, teachers must behave respectably in their public lives and their actions must not damage their reputations.³⁴ Subsection X indicates that teachers must not censure government actions or promote civil disobedience of any kind. Pursuant to Subsection XVI, teachers must inform the authorities of any irregularity observed in the educational services provided at the school.

Section 26 of the R.C.G.T. states the prohibitions for the teachers. In particular, Subsection II establishes that teachers cannot give any documents, data or information on school-related matters to any agency or individual without the corresponding authorization.³⁵

Section 46 (V) of the L.F.T.S.E. lists the possible reasons for teacher termination: (*i*) when the teacher engages in acts of dishonesty, violence or disruptiveness against educational authorities, colleagues or any of their relatives at any time, whether during working hours or not; (*ii*) when the teacher intentionally destroys buildings, equipment or any other item used to do her/his job; (*iii*) when the teacher behaves immorally during working hours; (*iv*) when the teacher reveals secret or confidential job-related information; (*v*) when the teacher compromises the safety of the office or of her/his co-workers through imprudent, careless or negligent behavior;³⁶ (*vi*) when the teacher constantly and for no apparent reason disobeys orders from the educational authorities; (*vii*) when the teacher habitually attends work under the influence of alcohol or drugs; (*viii*) when there is strong evidence supporting teacher non-compliance with the general working condi-

³⁴ Section 44 (II) of the L.F.T.S.E. states that teachers must behave respectably when working.

³⁵ A similar prohibition is referred to in Section 44 (IV) of the L.F.T.S.E.

³⁶ See also Section 44 (V) of the L.F.T.S.E.

tions provided in Sections 25 and 26 of the R.C.G.T., and (ix) if the teacher is sentenced to prison.³⁷

B. *Sanctions*

The sanctions that can be imposed on a teacher who violates the rules contained in Sections 25 and 26 of the R.C.G.T. are listed in Section 71 as: an oral warning, written reprimand, written censure, underperformance note,³⁸ unpaid suspension and termination. This section gives a detailed description of two of these sanctions: the written censure and the underperformance note.

According to Section 77 of the R.C.G.T., a teacher receives a written censure when she/he disobeys the orders given by the educational authorities,³⁹ does not behave respectably on the job,⁴⁰ and violates any of the prohibitions stated in Section 26 of the R.C.G.T. According to the M.O. and Section 72 of the R.C.G.T., the principal has the authority to give a censure directly to the teacher in question. A copy of the censure is placed in the teacher's personnel file and another copy is submitted to the CNME, which is in charge of the promotion system. The text of the censure must elaborate on the circumstances (manner, time and place) under which the event occurred and must also express the legal principle the teacher has violated. The principal must deliver the censure to the teacher in the presence of two witnesses. The sanctioned teacher must sign and date all the copies of the censure in the presence of the principal. If the teacher refuses to sign, the principal reads the document to the teacher and, before the witnesses, certifies that the teacher refused to receive the sanction. When this occurs, the principal writes the date the delivery of the censure was attempted and the principal and witnesses sign all the copies of this document.

According to Section 73 of the R.C.G.T., an underperformance note due to misconduct is issued to teachers with three censures on their record. Once the principal sees that a teacher has received three censures, the principal requests that the superintendant give the teacher an underperformance note.⁴¹ The principal must attach copies of the documents supporting the request, (*i.e.* a copy of each censure issued to the teacher). The superintendant evaluates the principal's request, and if adequately sup-

³⁷ When it is possible to appeal a court sentence, the teacher can only be temporary suspended from the job. *See* Section 45 (II) of the L.F.T.S.E.

³⁸ The term in Spanish is *nota mala*.

³⁹ *See* Section 25 (VI) of the R.C.G.T.

⁴⁰ *See* Section 25 (IX) of the R.C.G.T.

⁴¹ *See* Section 74 of the R.C.G.T.

ported, the superintendent gives an underperformance note, which is then delivered to the teacher via the school principal. The superintendent must place a copy of the underperformance note in the teacher's personnel file,⁴² and deliver a copy to the CNME.

Section 77 of the R.C.G.T. grants the principal discretionary power to sanction teachers, with either a censure or an underperformance note if a teacher violates the codes set forth in Section 25 subsections of the R.C.G.T.⁴³ The DGAJ is also authorized to issue censures and underperformance notes for teacher misconduct. When the DCA decides not to present the record of a particular administrative hearing before the TFCA, the DCA submits the case documents to the DPL, which can then impose the corresponding sanction that may consist of a censure or a negative disciplinary score.

C. The Administrative Hearing in Cases of Misconduct

An administrative hearing can be held when a teacher violates the rules set forth in Section 46 of the L.F.T.S.E. In practice, principals facing these cases do not implement the administrative hearings immediately, but first inform the superintendent of the teacher's misconduct by filing a document known as a statement of facts. This document attests to the occurrence of one or several events at the school that directly involve the material, human or financial resources under the principal's control. The statement of facts must be written immediately after the principal receives knowledge of the event.

Once the principal has submitted the statement of facts to the superintendent, the officer issues a written response to the principal recommending the measures to be implemented. In addition to a censure or an underperformance note, another possible measure is an administrative hearing. When the superintendent recommends that the principal hold an administrative hearing, she/he also asks the principal to go to the LSO for legal advice as to how this proceeding should be carried out. The legal assistance provided by the LSO often consists of reviewing the template to be used at the hearing, as well as providing specific recommendations regarding witness participation. Since a principal does not have the school funds to pay for legal services, a principal who decides to hire private lawyers must pay them out of her/his own pocket.

Once the superintendent has recommended an administrative hearing, the principal must start the hearing proceedings as soon as possible. It is

⁴² See Section 75 of the R.C.G.T.

⁴³ See subsections V, VII, VIII, X and XVI of Section 25 of the R.C.G.T. These subsections have been presented above.

important to note that the statute of limitations for dismissal actions is four months from the date of the act of misconduct.⁴⁴ The procedure for an administrative hearing, the first step in the termination process, is found in the *Líneamientos que Regulan la Instrumentación de Actas Administrativas a Trabajadores de Base* (L.R.I.A.A.) [Guidelines for Implementing Administrative Hearings of Tenured Employees], issued by the AFSEDF in 2008. First, the principal must notify the teacher and her/his union representative⁴⁵ at least 24 hours before⁴⁶ the administrative hearing. Notification must be in writing and include the exact time, date and location of the hearing, which must take place at the school where the teacher works and during the teacher's work schedule. Only under exceptional circumstances can it take place elsewhere. The notification must specify the reasons for the administrative hearing and be signed by the principal. When delivering the notifications, the principal must request written acknowledgement of receipt from the teacher and the union representative.⁴⁷ All these steps are critical to the legal procedure for an administrative hearing. An error in drafting or delivering the notifications can render the entire procedure invalid, thus making it impossible to terminate the teacher.

The school principal chairs the administrative hearing.⁴⁸ If the principal is the party affected by the teacher's behavior (*i.e.* disobedience or aggression against the principal), the assistant principal or the supervisor performs the principal's role at the hearing. The principal is limited to allocating a speaking order for those taking part in the procedure and issuing a statement explaining the teacher's alleged behavior. The principal cannot speak with eyewitnesses or any other participant at the hearing; if the principal does, the DCA can rule the record of the administrative hearing invalid. At all times during the hearing, the principal is assisted by a secretary who records the entire procedure. The main purpose of an administrative hearing is to create an evidentiary record. It should be noted that the procedure for an administrative hearing does not consider the participation of an administrative law judge, an independent fact-finder or any other authority.

The principal begins the hearing by stating the time and place of the hearing as stated in the notification given to the teacher and the union representative. The personal information of the hearing participants (the teacher, the union representative and witnesses) is then recorded. The prin-

⁴⁴ The statute of limitation is specified in Section 113 (II) (C) of the L.F.T.S.E.

⁴⁵ This person can be the school union representative or the sector union representative.

⁴⁶ This provision is stipulated in Section 747 *Ley Federal del Trabajo* [L.F.T.] [Federal Labor Law], D.O., 1 de abril de 1970 [hereinafter *L.F.T.*].

⁴⁷ According to Section 784 of the L.F.T.

⁴⁸ In exceptional cases in which the school does not have a principal, the assistant principal is responsible for conducting the administrative hearing.

principal goes on to make a statement regarding the acts that were allegedly committed by the teacher. According to DCA lawyers, eyewitnesses are not required to be present when the principal issues this statement. The principal is not obligated to refer to the legal provision violated by the teacher's behavior, and is in fact recommended not to do so.⁴⁹ The principal then assigns a speaking order for the eyewitnesses to give testimony. Each of the acts allegedly committed by the teacher must be backed by two or three eyewitnesses. It is possible to present only one eyewitness at an administrative hearing when, depending on the circumstances of the case, only one eyewitness knows of the event.⁵⁰ In general, eyewitnesses must mention the circumstances of the reported acts, such as time and place, in their testimonies.

When the eyewitnesses have finished giving testimony, the principal states the details of the teacher's appointment (level, school and shift assigned) and gives the teacher the opportunity to speak. After the teacher's statement, the principal assigns the speaking order for the teacher's witnesses, who are chosen by either the teacher or the union representative to testify in favor of the teacher. There is no limit on the number of witnesses the teacher or her/his union representative can present at an administrative hearing. After the participation of these witnesses, the principal gives the union representative the opportunity to speak and then closes the hearing.

Before the participants sign the record of the proceedings, the principal usually allows them to review their statements to ensure the record accurately reflects their oral participation. If the participants agree with the text contained in the record, the administrative hearing record is printed and signed by the participants and each page is stamped with the official school seal. One copy of the signed record is submitted to the DCA, another copy is sent to the CSES, a third copy is for the school principal, and a fourth copy is given to the teacher. The principal must attach any relevant documents that support the allegations of the teacher's misconduct to the administrative hearing record.

Although the principal is responsible for completing all the above-mentioned steps, the principal does not file the documents with the DCA and the CSES, but to the OD. After a brief review of the record, the LSO submits the record to the DCA and the CSES. The LSO focuses on confirming that the administrative hearing record fulfills certain basic legal requirements, for example, that the notifications were given to the teacher and the union representative. If the administrative hearing record does not comply with a legal requirement, but the error can be corrected without affecting the validity of the entire procedure, the superintendant returns the record

⁴⁹ If the principal makes reference to the wrong legal provision, the DCA can declare the administrative hearing invalid.

⁵⁰ See Sections 813 (I) and 820 of the L.F.T.

to the principal for correction. If the legal deficiency constitutes a fatal error, for example, if the principal forgot to notify the teacher of the time and place where the administrative hearing would be held (regardless of the fact that the hearing was actually conducted and the teacher attended the procedure), the entire procedure becomes invalid. If the LSO rules that the administrative hearing record is invalid, another administrative hearing cannot be conducted again.

TABLE 4. STEPS FOR IMPLEMENTING AN ADMINISTRATIVE HEARING
IN CASES INVOLVING UNDERPERFORMANCE THROUGH MISCONDUCT

<i>Step</i>	<i>Description</i>
Statement of facts	The statement of facts is a written document that describes the behavior allegedly committed by the teacher. The statement of facts is submitted to the superintendent.
Recommendation of the superintendent	After evaluating the statement of facts, the superintendent can recommend that the principal hold an administrative hearing.
Legal advice from the LSO	When the superintendent recommends an administrative hearing, she/he also asks the principal to attend a session with LSO lawyers to receive legal advice on how the hearing should be conducted.
Delivery of the notifications	The principal must deliver written notifications informing the teacher and her/his union representative of the date, time and place where the administrative hearing will be conducted at least 24 hours in advance.
Administrative hearing at the school	The principal chairs the administrative hearing. At the hearing, the principal assigns speaking order and makes a statement explaining the behavior allegedly committed by the teacher.
Additional evidence	The principal must attach to the hearing record any relevant evidence that might be useful to prove the behavior supposedly committed by the teacher.
Submission of the record of the administrative hearing	The principal files the hearing record, as well as any other relevant documents, with the superintendent.
LSO review of the record	The superintendent verifies that the administrative hearing record complies with the basic legal requirements. If the superintendent finds a mistake, she/he returns the record to the principal for correction.
Submission of the record to DCA	Once the superintendent has reviewed that the hearing record fulfils the minimum legal requirements, the record is submitted to the DCA and the CSES. The DCA determines whether the case is to be taken before the TFCA or is submitted to the DPL for further analysis.

According to the superintendents and DCA lawyers, principals take care to avoid certain common errors when conducting administrative hearings. First, the principal is recommended to warn eyewitness of the criminal responsibility that they could face if they give false testimony at the administrative hearing, which according to Section 247 of the Mexico City Criminal Code, is punishable by two years of prison. Second, the principal should contact the eyewitnesses days before the hearing to advise them how to give their statements; in particular, the principal should tell them that it is key to mention the circumstances (manner, time and place) of the events. If the testimonies given by eyewitnesses do not elaborate on these aspects, the testimonies might be useless due to their vagueness. Third, it is very hard to prove the teacher's behavior based on the testimony of a single eyewitness, for example, the offended party. If this situation arises, the principal should try to include other pieces of evidence in the administrative hearing record, such as expert witness testimony or public documents that effectively prove the behavior allegedly committed by the teacher. Fourth, the DCA and the TFCA consider hearsay testimonies invalid evidence. Therefore, only eyewitnesses should be chosen to participate in the administrative hearing. Fifth, the testimonies given by all the eyewitnesses must be consistent, that is, the testimonies must not contradict each other or refer to a completely different set of facts. If the testimonies are not consistent, the DCA will not take the administrative hearing record to the TFCA. Finally, the eyewitnesses cannot receive any assistance when issuing their testimonies from the principal or any other person. If the teacher or the union representative states on the record that the eyewitnesses were assisted in any way, the DCA will not take the hearing record to the TFCA.

To conclude this section, I present the following table, which summarizes the legal provisions that regulate teacher discipline, as well as the measures that can be imposed on teachers who break these rules.

TABLE 5. LEGAL PROVISIONS REGULATING TEACHERS' DISCIPLINE, AND MEASURES THAT CAN BE IMPLEMENTED IN CASES INVOLVING UNDERPERFORMANCE THROUGH MISCONDUCT

<i>Description of the legal provision</i>	<i>Legal provision</i>	<i>Formal measure that should be implemented by the principal</i>	<i>Legal provision</i>
The teacher must obey the orders given by educational authorities	Section 25 (VI) of the R.C.G.T.	Oral or written reprimand	Sections 78 and 71 (I) of the R.C.G.T.
The teacher must avoid continuous disobedience of the orders given by the educational authorities.	Section 46 (V) (G) of the L.F.T.S.E.	Administrative hearing to start the dismissal process	Sections 46bis and 82 of the L.F.T.S.E.

TABLE 5. (continued...)

<i>Description of the legal provision</i>	<i>Legal provision</i>	<i>Formal measure that should be implemented by the principal</i>	<i>Legal provision</i>
The teacher must behave with discretion when doing her/his job.	Section 25 (VII) of the R.C.G.T.	Censure or negative disciplinary score	Sections 77, 71 (I) and 71 (II) of the R.C.G.T.
The teacher must not display any immoral behavior on the job.	Section 45 (V) (D) of the L.F.T.S.E.	Administrative hearing to start the dismissal process	Sections 46bis and 82 of the L.F.T.S.E.
The teacher must treat the public with courtesy and diligence.	Section 25 (VIII) of the R.C.G.T.	Censure or negative disciplinary score	Sections 77, 71 (I) and 71 (II) of the R.C.G.T.
The teacher must display appropriate behavior in her/his public life, and avoid conduct that affects her/his reputation.	Section 25 (IX) of the RGCT and section 44 (II) of the L.F.T.S.E.	Oral or written reprimand	Section 78 and 71 (I) of the R.C.G.T.
The teacher must not attend work under the influence of alcohol or drugs.	Section 46 (V) (H) of the L.F.T.S.E.	Administrative hearing to start the dismissal process	Section 46bis and 82 of the L.F.T.S.E.
The teacher must not censure government actions or promote civil disobedience against educational authorities.	Section 25 (X) of the R.C.G.T.	Censure or negative disciplinary score	Sections 77, 71 (I) and 71 (II) of the R.C.G.T.
The teacher must inform the educational authorities of any irregularity observed in the services provided by the school.	Section 25 (XVI) of the R.C.G.T.	Censure or negative disciplinary score	Sections 77, 71 (I) and 71 (II) of the R.C.G.T.
Unless duly authorized, the teacher cannot provide any individual or entity information about documents, data or other job-related matters.	Section 26 (II) of the R.C.G.T. and section 44 (IV) of the L.F.T.S.E.	Oral or written reprimand	Section 78 and 71 (I) of the R.C.G.T.
The teacher cannot reveal any secret or confidential job-related information.	Section 46 (V) (E) of the L.F.T.S.E.	Administrative hearing to start the dismissal process	Section 46bis and 82 of the L.F.T.S.E.
The teacher must refrain from acting dishonestly or violently against the principal or her/his colleagues.	Section 46 (V) (A) of the L.F.T.S.E.	Administrative hearing to start the dismissal process	Section 46bis and 82 of the L.F.T.S.E.
The teacher must refrain from intentionally destroying buildings, equipment or any job-related material.	Section 46 (V) (C) of the L.F.T.S.E.	Administrative hearing to start the dismissal process	Section 46bis and 82 of the L.F.T.S.E.
The teacher must refrain from performing any negligent or careless action that compromises the safety of the school or co-workers.	Sections 46 (V) (F) and 44 (V) of the L.F.T.S.E.	Administrative hearing to start the dismissal process	Section 46bis and 82 of the L.F.T.S.E.
The teacher is sentenced to prison.	Sections 46 (V) (J) and 44 (V) of the L.F.T.S.E.	Administrative hearing to start the dismissal process	Section 46bis and 82 of the L.F.T.S.E.

*D. Temporary and Permanent Removal as Measures Implemented
in Cases Involving Underperformance through Misconduct*

The TFCA is one of the bodies authorized to temporarily remove a tenured teacher from a school. For this, three requirements must be met: the teacher's behavior must violate Section 46 (V) of the L.F.T.S.E., the principal must have conducted the appropriate administrative hearing, and the DCA must have filed a record of the administrative hearing with the TFCA. If the TFCA grants the order, the teacher is transferred to a different school until the TFCA issues its final decision on the case.

A teacher can also be permanently removed from a school for misconduct by superintendants or the DPL. Based on Section 110 of the L.G., a superintendant can issue an order for a teacher's permanent removal from a school only because of necessities of the service. "Necessities of the service" means any aspect that may interfere with properly providing educational services at a school, for instance, a teacher who has had significant conflicts with several of her/his colleagues or a teacher whose behavior poses a threat to students' well-being. The superintendants interviewed say that orders for permanent removal are exceptional, and these orders are issued only when the principal has exhausted all the measures (formal and informal) at hand to solve the disciplinary issue, or when the teacher has committed an act of severe misconduct that requires her/his immediate transfer. An order for permanent removal can also be issued by the DPL in cases in which the DCA has elected not to take the case before the TFCA.

4. Teacher Attendance and Punctuality: Rules and Sanctions

A. Rules

Section 44 (VI) of the L.F.T.S.E. states that it is the teacher's obligation to attend work punctually.⁵¹ Section 25 (II) of the R.C.G.T. says that the teacher must comply with the rules to verify the punctuality of school personnel. In particular, Section 117 of the L.G. indicates that to verify punctuality every member of the school personnel must clock in and clock out on a time card. Middle schools regularly use a time clock to record this information.

B. Sanctions

Section 116 of the L.G. indicates that tardiness is penalized under Section 80 of the R.C.G.T., which states that the following sanctions can be

⁵¹ Section 14 (III) of the Agreement 98 also states that school personnel must be on time when performing their jobs and that they must not abandon their duties related at any time during their working hours.

imposed on the teacher: written reprimand, salary discount, unpaid suspension, underperformance note and termination.

The *Criterios para la Operación del Sistema de Administración de Recursos Humanos en la Secretaría de Educación Pública* [Ministry of Education Criteria for Personnel Administration System Operation], issued by the SEP in 2005, defines an unjustified absence as a teacher who does not present himself at work and does not have the necessary authorization to do so (*i.e.* a leave of absence). The rules determining the sanctions for tardiness and unjustified absences are: if the teacher is between ten and twenty minutes late on two occasions, the teacher receives a negative disciplinary score; if the teacher is between twenty and thirty minutes late, the teacher receives an underperformance note; if the teacher is more than thirty minutes late, the teacher is not allowed to clock in, which is considered an unjustified absence and is accompanied by a corresponding salary discount. A teacher who accumulates five underperformance notes due to tardiness is penalized with one day of unpaid suspension. If a teacher accumulates seven days of unpaid suspension due to tardiness in the course of a year, the SEP has the right to request the teacher's termination.

If a teacher accumulates several unjustified absences, the following rules apply: for two absences, the teacher receives a written reprimand and a salary discount of two days of work; for three absences, the teacher is sanctioned with one day of unpaid suspension and a salary discount of three days of work; for four absences, the teacher receives the corresponding salary discount of four days of work plus two days of unpaid suspension.

Section 80 (H) of the R.C.G.T. establishes that the sanctions that can be imposed on a teacher when she/he incurs non-continuous absences during a certain period of time are: for up to four absences within a period of two months, the teacher is sanctioned with a written reprimand and a salary discount of four work days; for up to six absences within a period of two months, the teacher receives three days of unpaid suspension and a salary discount of six days of work, and from 13 to 18 absences within a period of six months, the teacher is penalized with the corresponding salary discount for the number of absences, plus seven days of unpaid suspension.

Besides these measures, Section 46 (I) of the L.F.T.S.E. states that a teacher can be terminated for job abandonment. Section 60 of the R.C.G.T. defines job abandonment as when a teacher is absent for three consecutive days. Judicial interpretation provide that job abandonment requires that the teacher not attend work for unjustified reasons for four consecutive days.⁵² Such interpretation contradict Section 60 of the R.C.G.T., which states that the teacher only has to be absent for three consecutive

⁵² SUPREMA CORTE DE JUSTICIA DE LA NACIÓN [S.C.J.N.] [Supreme Court], APPENDIX OF 1995 OF THE JURISPRUDENCE BULLETIN OF THE FEDERATION AND ITS GAZETTE (Title V, part on the Supreme Court of the United States of Mexico, Thesis 559) at 368.

days to initiate an administrative hearing for job abandonment. To avoid any contradiction between Section 60 of the R.C.G.T. and judicial interpretations, superintendents recommend that principals conduct an administrative hearing for job abandonment after 30 minutes of the fifth day of unjustified absence.

The following table summarizes all the sanctions listed above.

TABLE 6. LEGAL PROVISIONS REGULATING PUNCTUALITY AND ATTENDANCE, AND FORMAL MEASURES USED IN CASES INVOLVING UNDERPERFORMANCE FOR LACK OF PUNCTUALITY OR UNJUSTIFIED ABSENCES

<i>Description of the Behavior</i>	<i>Formal Measure</i>	<i>Legal Provision</i>
Arriving between ten and twenty minutes late on two occasions	Negative disciplinary score	Section 80 (A) of the R.C.G.T.
Arriving between twenty and thirty minutes late	Negative disciplinary score	Section 80 (B) of the R.C.G.T.
Arriving more than thirty minutes after starting time	One day of unpaid suspension	Section 80 (C) of the R.C.G.T.
The accumulation of five negative disciplinary scores due to tardiness	One day of unpaid suspension	Section 80 (D) of the R.C.G.T.
The accumulation of seven unpaid suspensions due to tardiness in a period of one year	The SEP can request termination	Section 80 (E) of the R.C.G.T., Section 23.9 of the C.O.S.A.R.H. and Section 46 (V) (I) of the L.F.T.S.E.
Two consecutive unjustified absences	Two days of salary discount and a written reprimand	Section 80 (G) of the R.C.G.T.
Three consecutive unjustified absences	Three days of salary discount and one day of unpaid suspension	Section 80 (G) of the R.C.G.T.
Four consecutive unjustified absences	Four days salary discount and two days unpaid suspension	Section 80 (G) of the R.C.G.T., Section 23.6 of the C.O.S.A.R.H. and Section 46 (V) (B) of the L.F.T.S.E.
Five or more consecutive unjustified absences. In this case, it is considered job abandonment.	The SEP can request termination.	Section 60 of the R.C.G.T., Section 46 (I) of the L.F.T.S.E and jurisprudence criteria
Four non-consecutive unjustified absences in two months	Four days of salary discount and a written reprimand	Section 80 (H) of the R.C.G.T.
Six non-consecutive unjustified absences in two months	Six days of salary discount and three days unpaid suspension	Section 80 (H) of the R.C.G.T.
Between 13 and 18 non-consecutive unjustified absences in six months	The corresponding salary discount plus seven days unpaid suspension	Section 80 (H) of the R.C.G.T.

The procedure to implement the various sanctions is regulated by Section 80 of the R.C.G.T. When delivering a written reprimand to the

teacher, the principal must include a copy of the time card with the late marks or absence, a copy of the teacher's official schedule, and a copy of the absence report previously submitted to the OD. The written reprimand must be delivered to the teacher in the presence of two witnesses assigned by the principal and signed by the teacher. The principal must then file one copy of the written reprimand with the CSES Office of Personnel Administration (SAP), another with the CNME, and place another copy in the teacher's personnel file at the school.

The procedures for authorizing underperformance notes, unpaid suspensions and salary discounts are conducted by the OD. The processes for issuing an underperformance note and for imposing unpaid suspensions are very similar. First, the school principal writes the superintendant a petition requesting her/him to authorize an underperformance note or an unpaid suspension. The principal must include copies of the time card, the teacher's official schedule and the absence report in the petition. The superintendant then decides whether to authorize the sanction. If the superintendant authorizes the sanction, she/he issues a document certifying the poor performance note or unpaid suspension. The text of the document explains the behavior that resulted in the sanction, as well as the legal rule broken by misconduct. While in case of an underperformance note, the document is directly delivered to the teacher; the document pertaining to unpaid suspension is delivered to the principal, and the teacher only receives a copy. In both cases, the superintendant files a copy of the document certifying the sanction with the SAP and the CNME.

It is also the OD's responsibility to conduct the procedure for salary discounts. The OD must request a report of the teacher's absences and tardiness from the principal twice a month. In the report, the principal must attach the time cards proving the teacher's absence or tardiness. The OD must review the principal's report to verify that the documents supporting the absences or late tardiness are actually correct. If there are mistakes in the documents, the OD returns the report to the principal so that the error(s) may be corrected. Once the OD has verified that the report is correct, she/he then enters the attendance information into the SAP database so the SAP can deduct the corresponding discount from the teacher's next paycheck. Although the whole process might seem slightly cumbersome, if the principal submits the report to the OD on time, the salary discount is deducted the same month of the absence or tardiness.

The authorities issuing a written reprimand, an underperformance note or an unpaid suspension must always explain the reasons for the sanction and state the legal provision that authorizes them to apply the sanction. If the document certifying the sanction delivered to the teacher does not meet these legal requirements, the teacher can appeal the validity of the sanction on the grounds of due process violations. In practice, such appeals are very rare.

Finally, there is another mechanism to sanction teachers who are tardy or absent without a valid justification: non-renewal of the appointment. As noted before, the non-renewal is only applicable to temporary teachers. The principal must support her/his decision of non-renewal with any available evidence proving the teacher's misconduct. The most common evidence principals present in these cases are the teacher's time cards showing late marks or absences. The superintendant must ensure that the principal adequately justifies the teacher's non-renewal. If there is insufficient evidence for a non-renewal decision, the superintendant can request that the principal reconsider her/his decision or even order the principal to renew the teacher's appointment.

C. The Administrative Hearing for Job Abandonment

In cases of unjustified absences, a principal can hold an administrative hearing for job abandonment. As explained above, this occurs when the teacher is absent from the job for at least five consecutive days without legal justification. In contrast to the administrative hearings for misconduct, when a principal conducts an administrative hearing as described below, she/he does not need to submit a statement of facts to the superintendant.

In fact, jurisprudence criteria hold that an administrative hearing for job abandonment does not need to comply with the legal requirements established in Section 46 (b) of the L.S.F.T.S.E.⁵³ Therefore, the principal is not obligated to notify the teacher or her/his union representative of the hearing. In any case, the principal must be careful to substantiate that the administrative hearing record includes all the information and documents that prove job abandonment. The administrative hearing for job abandonment must be conducted at the school where the teacher works and during her/his working hours. At the hearing, the principal states that the teacher has been absent for at least five consecutive days without a valid excuse and then assigns a speaking order for the eyewitnesses, who certify that the teacher has been absent from her/his job for a number of days, and they know of no legally valid reason that justifies the teacher's absence. The principal also has to make a statement affirming that, to the best of her/his knowledge, she/he does not know of any legal reason that might justify the teacher's absences. Finally, the principal closes the hearing. The principal must present all the relevant documents that prove the teacher's unjustified absences, especially the time cards. After being signed by the participants, the hearing record is then sent to the OD.

⁵³ SUPREMA CORTE DE JUSTICIA DE LA NACIÓN [S.C.J.N.] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, tesis P.LV/2005, título XXIII.

In an administrative hearing for job abandonment, the OD also submits the record to the DCA and the CSES after the LSO has checked that the hearing record complies with the basic legal requirements. In its review, the LSO focuses on verifying that the teacher has not requested any leave of absence that might justify her/his absences, and that the teacher has signed the time cards (otherwise the time cards would be legally invalid).⁵⁴

5. The Teacher as a Federal Civil Servant: Rules and Sanctions

A. Rules

Teachers working for the AFSEDF are federal civil servants. As such, middle school teachers are subject to the L.F.R.A.S.P. Section 8 of the L.F.R.A.S.P. describes the obligations of federal civil servants. Relevant obligations listed include: performing duties adequately and treating the public respectfully (Subsection VI), as well as avoiding any acts of nepotism or corruption when performing the job (Subsections XII and XIII).

B. Sanctions

When any of the provisions contained in the L.F.R.A.S.P. is violated, in particular, those included in Section 8, the SEP Comptrollers' Office has the authority to impose one of the following administrative sanctions on the teacher: a public or private reprimand, unpaid suspension for a period ranging from three days to one year, termination or a fine.

Section 8 states that the sanction imposed on the teacher largely depends on the damage the teacher's behavior has caused and on whether the teacher obtained any significant economic benefit in breaking the law. Since the teacher's job does not involve handling valuable assets, it is likely that a teacher's violation is punished, at most, by unpaid suspension for a period no longer than one year.⁵⁵ The sanctions imposed by the SEP Comptrollers' Office can be challenged under the rules set forth in Section 25 of the L.F.R.A.S.P.

6. Remedies for Sanctions imposed on Teachers by Educational Authorities

Section 83 of the R.C.G.T. states that a teacher can request a motion for reconsideration when she/he is sanctioned with a written reprimand, a cen-

⁵⁴ See section 20 of the L.R.I.A.A.

⁵⁵ According to Section 14 of the L.F.R.A.S.P.

sure, an underperformance note, an unpaid suspension or a salary discount. To present a motion for reconsideration, the teacher must submit a written petition to the officer who issued the sanction within 10 days of being notified of the sanction. The officer who decides on the motion for reconsideration is the person who issued the sanction. If the motion for reconsideration is denied, the teacher has the right to appeal to the TFCA. According to the interviews with superintendents, teachers rarely request a motion for reconsideration when they receive a sanction.

A motion of reconsideration does not apply to administrative hearings or hearing records. A motion for reconsideration involves an official's evaluation of the legal validity of the sanction. An administrative hearing is not a sanction, but an evidence-gathering procedure that will eventually support the allegations regarding the teacher's behavior. The TFCA is responsible for deciding whether the teacher should be sanctioned, taking into consideration the elements provided in the record of the administrative hearing. Since the TFCA, and not the educational authorities, is the only authority vested with the power to rule on the validity of any aspect of an administrative hearing, a motion of reconsideration against any issue related to an administrative hearing (including its record) is not applicable.

Nor does a motion of reconsideration apply to sanctions imposed by the DPL. As explained above, in cases in which the DCA decides not to take the case before the TFCA, the DCA submits the case file to the DPL. According to Section 82 of the R.C.G.T., the DPL has the authority to impose a sanction on the teacher. When this occurs, the teacher can request that the TFCA review the legal validity of the sanction issued by the DPL. The statute of limitation depends on the type of measure imposed: one year when the sanction is a censure or a negative disciplinary score,⁵⁶ and four months when the sanction is an unpaid suspension.⁵⁷ According to Section 129 of the L.F.T.S.E., to request the review of the sanction, the teacher needs to submit a written petition to the TFCA. The teacher must attach any relevant evidence that might be considered by the TFCA when issuing its final decision. In these lawsuits, the teacher has the right to be represented by a private attorney or a public defender.⁵⁸

7. Termination Lawsuits before the Federal Tribunal of Conciliation and Arbitration

The TFCA is responsible for deciding termination lawsuits involving the SEP⁵⁹ and is comprised of four courts. Each of these courts is formed of

⁵⁶ See Section 112 of the L.F.T.S.E.

⁵⁷ See Section 113 (II) (A) of the L.F.T.S.E.

⁵⁸ See Sections 122, 134 and 135 of the L.F.T.S.E.

⁵⁹ See Section 24 (I) of the L.F.T.S.E.

three judges: one appointed by the federal government, another by the Federation of State Employee Unions, and one jointly appointed by the two above-mentioned judges and who acts as the president of the court. Presidents of the courts are appointed for a six-year term while judges appointed by the federal government and by unions can be removed at any time by the entities that appointed them.

Section 127 (b) of the L.F.T.S.E. regulates the litigation procedure for lawsuits in which public agencies request the termination of an employee. This procedure has three basic stages: the agency's presentation of the termination petition, the teacher's or her/his lawyer's response to the petition, and a hearing where all the relevant evidence is presented. The agency begins the process by submitting a written petition, which includes the administrative hearing record and any other supporting evidence, requesting the teacher's termination to the TFCA. On receiving this document, the TFCA has three days to deliver a copy of the petition to the teacher. The teacher then has nine days to submit a written response to the agency's petition. This response must mention any evidence that might bear any weight in the TFCA's decision. Finally, the TFCA summons the parties to a hearing, giving the parties the opportunity to present their evidence, cross-examine witnesses and present a closing statement (either orally or in writing). The TFCA issues its final decision five days later.

The following table summarizes the information of all the disputes resolved by two of the TFCA courts from 1979 to 2007. This table only depicts the information of disputes with the SEP acting as either a defendant or a plaintiff. Note that the number of lawsuits where the SEP requests the termination of its employees only represents 8.23% of the total.

TABLE 7. LAWSUITS INVOLVING THE SEP* FROM 1979 TO 2007
(ONLY TFCA COURTS 1 AND 2)**

<i>Type of Lawsuit</i>	<i># Lawsuits</i>	<i>% Lawsuits</i>
Termination cases (SEP is the plaintiff)	257	8.23%
Other lawsuits	2867	91.77%
Total	3124	100.00%

* Note that all SEP workers, and not only teachers, are included.

** SOURCE: Statistics Department, TFCA.

The next table provides information on the lawsuits in which the SEP requests the termination of its employees. This graph points out interesting facts: in most cases (63% of the total), the SEP does not obtain TFCA authorization to terminate the worker. It should also be noted that the average length of these cases is 3.43 years.

TABLE 8. LAWSUITS WHERE THE SEP* REQUESTED EMPLOYEE TERMINATION FROM 1979 TO 2007 (ONLY TFCA COURTS 1 AND 2)**

<i>Decision</i>	<i># Lawsuits</i>	<i>% Lawsuits</i>	<i>Average Length of the lawsuit in years</i>
The Court authorized termination	94	37%	3.32
The Court did not authorize termination	163	63%	3.54
Total	257	100.00%	

* Note that all SEP workers, and not only teachers, are included.

** SOURCE: Statistics Department, TFCA.

It is interesting to explore lawyers' and judges' views on the SEP's losing record in these cases. Lawyers working at the DGAJ concur with judges in that the lack of due ratification of eyewitness testimony before the TFCA is the main cause of this. As a DGAJ lawyer writes: "It is often difficult to locate the eyewitness or persuade him to attend a hearing to ratify testimony that was rendered years ago." Another problem that arises from the delay is the fact that eyewitnesses cannot remember the exact facts mentioned in their original testimonies, which results in omissions or contradictions when restating their testimonies before the TFCA. Of course, the likelihood of eyewitnesses making errors when giving their statements again increases due to the presence of a lawyer who represents the teacher. As one defendant's lawyer said: "many eyewitnesses do not remember the exact details of the events, and therefore, it is easy for us to lead them to contradict themselves."

Another factor explaining the SEP's losing record is the lack of economic resources to hire more lawyers to handle termination lawsuits.⁶⁰ Since lawyers have an enormous workload, they cannot properly handle their lawsuits. In addition to this, lawyers currently working at the DGAJ have little financial incentive to do their jobs well with an average salary of \$6,000 pesos a month. Moreover, most of these lawyers are hired on a temporary basis, which means they can be fired at any time without receiving any compensation. Given the unattractive working conditions, most DGAJ litigating lawyers are young people just out of law school and who see their work at the DGAJ as an opportunity to practice bureaucratic law for a couple of years before getting a better job.⁶¹

⁶⁰ This paragraph is based on two interviews conducted with Mr. Luis Vega Garcia, who headed the DGAJ for several years. These interviews were conducted on July 24, 2008, and on August 18, 2008.

⁶¹ The author presented a questionnaire on working conditions at the DGAJ to seven lawyers working at this office.

IV. CONCLUSIONS

- 1) Middle school teachers in Mexico City are subject to a special labor regime, which is complex and difficult to understand. Rules regulating teacher performance are spread throughout several federal statutes, administrative regulations and even jurisprudence criteria. These rules are sometimes redundant, and in several cases, obscure without the explanation as to who is responsible for enforcing them.
- 2) Although the rules that regulate teacher performance are the same regardless the type of appointment, working conditions can significantly vary depending on the teacher's appointment. On one hand, a permanent teacher has the right to participate in the promotion mechanisms, such as CM and the promotion system regulated by the R.E.T.S.E.P., provided by law, and she/he can only be terminated by means of a complex termination procedure that starts with the administrative hearing and ends with the TFCA's ruling. On the other hand, a temporary teacher cannot participate in the promotion mechanisms, and moreover, the principal has the discretionary authority to opt for her/his non-renewal, a relatively simple administrative procedure, if she/he is not satisfied with any aspect of the teacher's performance.
- 3) For a better understanding of the legal framework, teacher performance can be divided into three main categories: classroom performance, disciplinary performance, and attendance/punctuality.
- 4) A duty-based approach is used in the law to regulate teacher performance in the classroom.⁶² This approach is focused on presenting a list of desirable attributes the teacher must to comply with to properly perform her/his job. These attributes refer to the teacher's obligation to plan lessons, teach, evaluate the students and participate in school activities. The problem with this approach is that the law does not provide with a clear legal standard to determine whether the teacher is performing her/his duties adequately. Although the law establishes that the teacher has to "perform [his] duties with the required intensity and quality," there is no regulation or jurisprudence that define the terms *intensity* and *quality*.
- 5) In practice, it is quite difficult to terminate a permanent teacher on the sole grounds of underperformance in the classroom. This type of termination does not occur mainly due to the lack of a legal standard for evaluating teacher performance. Temporary teachers with poor performance in the classroom can simply be expelled from the school by non-renewing their appointments.

⁶² Michael Scriven, *Duty-Based Teacher Evaluation*, Vol. 1 No. 4 JOURNAL OF PERSONNEL EVALUATION IN EDUCATION 319-334 (1998).

- 6) The rules governing teacher disciplinary performance consist of a list of behaviors that the teacher must avoid. If the teacher incurs in any of these behaviors, the educational authorities have the right to impose a sanction on the teacher, including an administrative hearing for misconduct, the first step of the termination process. Although most of the administrative procedures for sanctions for misconduct are not quite complex, it is not the same for administrative hearings for misconduct, which is one of the most complicated administrative procedures regulated by the law. In practice, principals tend to make mistakes in performing this procedure.
- 7) The rules governing attendance and punctuality are clearly set forth in the law, as well as the sanctions to punish their violation. Due the nature of these behaviors and the evidence provided (generally time cards), the procedures to implement sanctions in these cases are easier compared to the other situations of underperformance.
- 8) According to the tables presented in section III.7, the SEP loses most of the cases in which it requests employee termination. The main reasons for this situation seem to be the lengthiness of the termination proceedings before the TFCA, particularly the hearing in which eye-witnesses have to corroborate their statements; and the lack of sufficient manpower to handle these cases properly.
- 9) Although this work focuses on presenting the rules that govern the performance of general middle school teachers in Mexico City, most of the provisions analyzed, except those included in the L.G. and the M.O., also apply to the teachers working at basic-level public education institutions.