

## Examining malpractice in the education context

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### Abstract

Malpractice is a dereliction of professional duty or a failure to exercise an ordinary degree of professional skill or learning by rendering professional services which results in injury, loss or damage. This study probed into the questions: (1) what are the types of educational malpractices in the Philippine education system; and (2) who are mostly guilty of these offenses? Data were gathered by downloading court cases and newspaper articles. A total of ten online court cases involving teachers, parents, students, school administrators, and principals were included. Coding was done by identifying the emerging themes per cluster. Findings indicated that offenses can be clustered into two: corruption and misconduct. Corruption cluster includes offenses ranging from illegal collection by the teachers from the students to the misuse of funds by the school administrators. On the other hand, the misconduct cluster includes sexual abuse targeted towards students by the teachers, and abuse of power by the school administrators towards the teachers. Data revealed that some cases involving principals whose offenses include misuse of funds and abuse of power were dismissed. Furthermore, involvement of principals was under-reported due to certain interfering reasons like fear, doubt or hesitation, or carelessness on the part of those who file the cases or as a result of the misleading or scheming practices of the offenders. On the other hand, abuses and minor offenses committed by the teachers were magnified. Among the teachers charged of malpractice in education, only one was found not guilty. This led to the creation of a typology that highlights the forms of offenses, the offenders and the offended as well as the results of the investigation of the cases. . Comparatively speaking, this may be attributed to the lack of power, authority and influence teachers have against principals and other school administrators.

**Keywords:** Corruption, educational malpractice, misconduct, illegal collection, misuse of funds, sexual abuses.

### Introduction

Corruption is an agent's departure from the demands for the responsible use of power in society. Although it commonly focuses on the acts of public officials, it is considered violation of the law, Corruption does not involve the state alone; rather a joint accountability of officials and of the state to the people (Moratalla, 2000). In this context, corruption basically is viewed as irresponsible use of power. In simpler terms, corruption is misuse of power associated with financial concerns in favor of the officials or the people related to them.

Corruption in education was defined by Deliversky (2016) as "the behaviour of persons entrusted with public or private responsibilities, who neglect their duties to achieve unjustified benefits." In addition, he has identified certain activities classified as corruption in education as follows: (1) channelling funds into personal use; (2) patronage;(3) bribery and extortion;(4) giving preferential access to services or goods;(5) influencing outcomes and (6) favouritism and irrespective merit. Majority of the aforementioned activities involve unjust use of power and have something to do with abuse on the use of resources, goods and services. Yiming and YanPing (2011) assert that in order to change and reform teacher education institutions, the existence of a balance relationship between government, society, and schools is imperative.

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Misconduct or unprofessional behaviour is manifested when one's acts fall short of the professional or ethical standards and codes of conduct accepted by a particular profession or group. It is basically actuations departing from the standard behaviour expected upon normal members of a profession or group (Royal College of Veterinary Surgeons, 2012).

Misconduct in education takes various forms and severity ranges from direct harm to students from teachers, administrators to teachers, or teachers to teachers (physical or sexual abuse) to an injurious act to the profession such as falsification of documents and the like. Generally, misconduct in education occurs within the school campus among members of the school community. In some cases, however, it happens outside the school premises without involving school personnel (Florida Education Department, 2018).

Common among the abuses, whether it be corruption or misconduct, is the misuse of power over others which can be manifested by the mismanagement of funds or physical and sexual abuses. The field of education is not free from these kinds of mishandlings.

In the Philippine Education setting, in particular, numerous reports on corruption and misconduct were shelled out. Some respondents, mostly teachers, were even found guilty of the offenses involving the misuse of funds, illegal non-contributions to government agencies, and sexual abuses. Consequently, this study would address the imbalance between the court decisions and the malpractices in education. Specifically, this research answered the questions: (1) what are educational malpractices in the Philippine education system; and (2) who are mostly guilty of these offenses? The study, likewise, analysed the offenses and come up with a typology that highlights the forms of offenses, the offenders and the offended, and the results of the investigation of the cases to inform authorities about certain offences which were getting out of hand.

## Malpractice in Education

Malpractice is a dereliction of professional duty or a failure to exercise an ordinary degree of professional skill or learning by on rendering professional services which results in injury, loss or damage. This term is commonly associated to the medical field. One subject that has been snubbed, or perceived in a different manner is malpractice in education. U.S. Secretary of Education Margaret Spellings, as cited by Smith and Fleming (2007) claimed that educational malpractice is always tied to the "No Child Left Behind" policy. On the contrary, Bousquet and Coburn (2016), stated that the educational malpractice doctrine covers a wide array of factual assertions. They concluded that educational malpractice does not only come within the premises of the no child left behind policy, not even the quality of services (teaching) inside the classroom alone but implicate school policies as well. While teacher competence is considered to be a vital ingredient towards the improvement of academic performance (Goh and Wong, 2015), it is imperative that the students' and teachers' experiences contribute to the overall growth of school stakeholders.

School policies provide advice for schools, students, parents and the wider school community on the provision of education services and decision making processes (Northern Territory Government). In this context, policies do not only encompass student behavior in school but also the wider school community that includes teachers and school managers.

Milley (2017), in his article *Maladministration in education: Towards a typology based on public records in Canada*, used the term *Maladministration* as an umbrella concept that includes managing or leading inefficiently, incompetently and carelessly, badly or improperly and covers a range of acts from making mistakes to transgressing policies and laws. The term covered administrative evil – that is, what school administrators do with their control over resources and authorities to overtly, covertly and even unconsciously cause harm to people and organizations.

In the same manner, *Malpractice* was used as an umbrella concept contextualized in education which encompasses offenses such as corruption which would include illegal collections and misappropriation of funds (Transparency International, 2013) and misconduct including physical, psychological and sexual abuses (New Zealand Education Council).

## Misconduct vs. Corruption

Misconduct in public office is broadly defined (Independent Broad-Based Anti-Corruption Commission). It may range from unlawful behaviour to simple conduct that fails to meet ethical or professional standards. On the other hand, certain complaints that they receive about corruption included taking offerings or bribes, committing fraud, theft or embezzlement, misuse of information or material acquired at work.

Because of the breadth of the concept of misconduct, some literature may qualify corruption under the umbrella of misconduct. Based on the claims of Independent Broad-Based Anti-Corruption Commission corruption does not only refer to the misuse of public power or position, rather it deals with money issues. This analogy leads to the pulling out of corruption from the umbrella of misconduct and has been viewed in this article as one independent concept.

The Florida Department of Education defined certain acts ranging from physical to sexual abuses and abuse of authority as misconduct. Transparency International (2013) also described different types of corruption in education. These processes may include procurement in construction, diversion of resources, bribery in access to education, buying of grades, misuse of grants for private gains and the like.

## Methodology

Data used in the study were court cases and newspaper articles publicly available online. Majority of the Philippine court cases and decisions were downloaded from the Chan – Robles virtual law library (<http://www.chanrobles.com>) and others were from the Supreme Court website (<http://www.sc.judiciary.gov.ph>). To be able to identify the cases that were relevant, proper keywords such as “*illegal collections*”, “*misuse of funds*”, “*sexual abuse*”, “*Department of Education*” and other related terms were used for searching. After reading each case that resulted from these keywords, 10 cases were chosen spanning from 1997-2017.

Newspaper articles were also downloaded to support the fact that majority of the offenses are not reported and do not reach proper legal authorities. In the presentation of cases, specific identifiable information of individuals has been coded as Principal A, Teacher A. Ten cases of education malpractices were clustered as either corruption or misconduct. Offenders and offended parties are either the principals, school administrator, schools, teachers, parents, and students, with guilty and non-guilty decisions.

Smith and Davies (2010) as cited by Theron (2015) argued that coding does not form the totality of data analysis but is useful in organizing data such that the underlying messages portrayed by the data becomes clear to the researcher. Gibbs, as quoted by Smith and Davies (2010) described aspects that may be coded. These may be names, activities or behaviour, events, strategies, tactics, present situations, meanings, participation, relationships or interactions, conditions or constraints, consequences, settings and may even include the researchers own reflections about the data. *In vivo* coding was used to identify themes. Afterwards, focused coding was done further breakdown the themes into more significant codes (Saldana, 2013). Coding has been the most efficient way for the researchers to consolidate available data in eventually capturing its most meaningful sections. Concepts were generated which helped in defining and effective analyses of available data.

## Results and Discussion

### *Corruption*

Corruption in this article has been viewed as misuse of power that has something to do with money. Several cases in the Philippines have been filed in connection to this. In the *Office of the Ombudsman v. Principal A*, the principal was found guilty because of several offenses: (a) collection of unauthorized fees, (b) non-remittance of authorized fees, and (c) failure to account for public funds among others. She was dismissed from service as per the decision of the Ombudsman. The

respondent filed a motion for reconsideration but was denied. Because of this, the respondent sought recourse to the Court of Appeals and the previous decision of the Ombudsman was reversed and set aside. In addition to this, the immediate reinstatement of the respondents was ordered with full back wages and benefits.

*Office of the Ombudsman v. Principal B*, is another case involving a school principal. The school principal was charged with thirty three (33) allegations of improprieties ranging from illegal handling of school funds, irregular financial transactions, perjury, and abuse of authority. The cases were dismissed twice: first, because the complaint was not subscribed and sworn to by the complainant; and second, because the complaint did not comply with the formalities when forwarded to the then Department of Education Culture and Sports. She was finally dismissed as per the decision of the Office of the Ombudsman but the decision was later set aside by the Court of Appeals.

In *Principal C v. Commission on Audit, Regional Office No. VI* the principal, was found guilty of several offenses including: (1) Late remittance of GSIS, PAG-IBIG and Medicare contributions, thus depriving the employees of availing themselves of loans and receiving benefits granted by these institutions, (2) Non-reflection as government funds in the books of account of miscellaneous fees received by the Principal from the City Government amounting to Php 184,536.76 (USD 3, 437.76 as of June, 2018) , which funds were spent for purposes other than those for which they were intended, (3) Spending the amount Php 161,150 (USD 3,002.68) purportedly for repair of projects which were not implemented and were without appropriation, (4) Disbursement by the school of a total of Php 467,254.55 for costumes of participants in the local festival Ati-Atihan, but only P48,275 (USD 899.50) of which was spent for the designer's fees; and there was no appropriation for the disbursement of the said amount, which was sourced from the school's Personal Services Funds; and (5) Fifty labourers' names appearing as payees in the payrolls significantly differ from those in other payrolls, casting doubt as to the documents' authenticity. This is an assailment of the court decisions via petition for review. However, the petition is denied.

Another case regarding corruption is *Teacher A v. Technological Institute of the Philippines (G.R. No. 158703)*. In this particular case, the teacher was found guilty also because of illegal collection which is a violation of a certain school memorandum. She was dismissed from service. The teacher later sought help from the teachers and employees organization of the university and was reinstated with full back wages. However, the case went back and forth and the final decision was the teacher's dismissal from service with the denial of the award of separation pay.

In *Teacher B v. Academy A (G.R. No. 172295)*, petitioner alleged that tithes to the a church have been illegally deducted from her salary; and she was not paid overtime pay, 13<sup>th</sup> month pay, five days service incentive pay and holiday pay. Furthermore, her Social Security System contributions have not been remitted. Her petition to be paid the amount of the illegal deductions from her salary, her holiday pay, service incentive leave pay, 13<sup>th</sup> month pay, to remit her contributions to the SSS as well as 10% of the attorney's fee was granted.

### **Misconduct**

On the other hand, misconduct has been viewed as misuse of authority over others. Acts may range from physical to sexual abuses and related doings.

*Department of Education v. Principal D*, is one case on misconduct involving a principal. In this case, parents filed a case against the principal of a certain elementary school. By virtue of the findings of the regional investigating committee, he was found guilty of sexual harassment. His forced resignation without prejudice to benefits was recommended. He filed a motion for reconsideration but was denied. At this point, he elevated his case to the Civil Service Commission (CSC) wherein the previous decision was set aside and he was acquitted of the charges. After being exonerated from charges of sexual harassment, he requested for reinstatement to service and was granted. Then Dep. Ed. Undersecretary Gascon requested for the copy of the CSC resolution that acquitted the principal and then field for a petition for review. After this, the CSC issued another resolution that sets aside the resolution that acquits the principal of the charges and now finds him guilty of sexual harassment. He was again dismissed from the service but filed a Petition for Certiorari, a petition asking the Supreme Court to review the decision of a lower court

(Techlawjournal.com). It was granted and the CSC was found guilty of abusing its discretion for granting the petition to review without regard to the principal’s fundamental right to due process. Dep. Ed. filed a motion for reconsideration but was denied. The decision in the CSC resolution that sets aside the principal, being guilty of the charges was affirmed.

Some cases involving misconduct would consist so much animosity like in the case of *School Administrator A v. People of the Philippines (G.R. No. 180832)*. The petitioner, is one of the school administrators. Factual data about the case are as follows: A student studying in the school in which School Administrator A was affiliated to was dismissed because of violating terms in his disciplinary probation. The parent of the student filed a complaint to the Department of Education for the violation of the Manual of Regulation of Private Schools and alleged that his son’s dismissal was undertaken with malice, bad faith and evident premeditation. Dep. Ed, ordered the readmission of the student and was able to graduate.

Other cases on misconduct would go on to be seriously physical. In *Teacher C v. Civil Service Commission (G.R. No. 198755)*, a Music, Arts, Physical Education and Health (MAPEH) teacher allegedly punched a student in the stomach for failing to follow instructions. Administrative and criminal cases were filed against him and was criminally found guilty of slight physical injuries and was sentenced to 11-20 days imprisonment. He was later found administratively guilty also and was given 6 months suspension without pay. He filed for a motion for reconsideration but was eventually denied. Instead, the decision was affirmed and modified. The new decision would comprise of the following penalties: dismissal from service with all its accessory penalties of cancellation of eligibilities, perpetual disqualification from government service, and forfeiture of retirement benefits. For the first time, Teacher C filed a motion questioning the jurisdiction of the Civil Service Commission regarding the case but was denied. Finally, he filed a Petition for Certiorari and was partially granted lowering the penalties to six months suspension anew.

Based on *CSC Resolution Number 15-0908*, the teacher, Teacher D committed the offense of grave misconduct by sexually abusing a student. Because of this, he was meted the penalty of one-year suspension from the service with stern warning that the repetition of the same offense shall be dealt with severely. Teacher D moved for reconsideration of the decision but was denied. Further appeals were made and the penalty was upgraded from one-year suspension to dismissal from the service. The motions for reconsideration that followed were all denied and the final decision was made with the inclusion of the following penalties: (1) dismissal from the service;(2) cancellation of eligibility;(3) forfeiture of retirement benefits;(4) perpetual disqualification from reemployment in the government service; and (5) bar from taking the Civil Service examination.

Some cases of misconduct would even lead to certain legal contradictions. In *Office of the Ombudsman v. Teacher E*, the Office of the Ombudsman filed for review on certiorari seeking to set aside the decision by the Court of Appeals on *a case versus Teacher E* which sets aside the petitioner’s decision for dismissal of the teacher from the service. The respondent is a 52-year old Mathematics teacher who allegedly was courting his student. He was found guilty of the offenses and was penalized dismissal from the service. However, the teacher appealed to the Court of Appeals and the decision by the Office of the Ombudsman was set aside in light that the Ombudsman’s functions are merely recommendatory and it does not have jurisdiction over the case based on R.A. 4670. Even though, the petition for review of the Ombudsman was granted and the previous decision of the Court of Appeals was reversed and set aside.

**Table 1.** Clusters of malpractice in education and the offenders, the offended and decisions on the cases

Cluster educational malpractice	Offenders	Offended	Decision
Corruption	Principal	Teachers	Not Guilty
Corruption	Principal	School	Not Guilty
Corruption	Principal	Teachers	Guilty
Corruption	Teacher	Students	Guilty
Corruption	School	Teacher	Guilty
Misconduct	Principal	Student	Not Guilty

Misconduct	School Administrator	Parent	Not Guilty
Misconduct	Teacher	Student	Guilty

## Findings

Based on the data collected, acts of malpractice in education were mostly being committed by principals and teachers towards various members of the academic community. However, it can be noticed that issues involving the principals as offenders tend to have longevity when it comes to court hearings especially in the misconduct cluster where pieces of evidences are vaguer compared to more tangible evidences in the corruption cluster. In addition, teacher offenders were found guilty of the offenses both under the misconduct cluster or the corruption cluster. Analysis of data paved the way for a typology of types of malpractices under each cluster. The presentation of this typology, as well as who among the offenders are mostly found guilty is the focus of the next sections.

**Table 2.** Types of Malpractice in the corruption cluster, the offenders, the offended, and the decisions on the cases

Type of Malpractice (Corruption)	Offenders	Offended	Decision
Illegal Collection	Principal	Teachers	Not Guilty
Non-accounting for public funds	Principal	School	Not Guilty
Non-remittance of authorized fees	Principal	School	Not Guilty
Late remittance of contributions	Principal	Teachers	Guilty
Misappropriation	Principal	School	Guilty
Illegal Collection	Teacher	Students	Guilty
Illegal Collection	School	Teacher	Guilty

### *Illegal Collections*

In the Philippines, the academe, in line with collections, is bounded by Dep. Ed. Order No. 19, s. 2008 otherwise known as Implementation of No Collection Policy in All Public Elementary and Secondary Schools. However, this legal basis on illegal collections mostly limits collections from the students only and among members of the school community, particularly the teachers whom they get the most contact with. Because of this, teachers are more susceptible to violating this rule most especially when faced with the circumstance of shedding out their own money for the sake of teaching-learning processes. In the case of Higher Education institutions, universities have their own set of pro-student rules and regulations as well when it comes to collections from students. On the part of the principals and school managers, the legal basis applicable would be R.A. 6713 otherwise known as Code of Conduct and Ethical Standards for Public Officials and Employees. Sections 7a and 7d, financial and material interest and solicitation or acceptance of gifts respective, in particular, are what limits the activities of principals and administrators when it comes to financial matters.

### *Late Remittance/Non Remittance of Contributions*

Late remittance or non-remittance of contributions would concern principals and school administrators. The legal bases to be taken into consideration about this are the GSIS Law (R.A. 8291) for public sector employees and the SSS Law (R.A. 8282) for private sector employees, the Pag-IBIG fund Law (R.A. 9679) and the National Health Insurance Act of 2013 (R.A. 10606). These laws would provide details about memberships such as enrollment, contributions, and benefits, among others.

***Misappropriation, Non-accounting for Public Funds and Non-remittance of authorized fees***

Misappropriation, non-accounting for public funds and non-remittance of authorized fees are offenses under the corruption cluster that would involve primarily principals and school administrators. R.A. 6713 otherwise known as Code of Conduct and Ethical Standards for Public Officials and Employees would be the most appropriate limiting legal base on such acts.

To take things in perspective, acts of malpractice under the corruption cluster under which principals are the offenders, three out of the five times the principals were acquitted. It is important to note that in most cases, as for the case of *Office of the Ombudsman v Principal E*, although at the very end she was found guilty of the offenses, the case was dismissed twice because of certain formalities. These formalities have something to do with the level of commitment of the complainants towards the case. Milley (2017) would explain the silence towards research about the misdoings of administrators to fear. In the same manner, some complainants would be skeptical to pursue cases in fear of getting back at. There are certain legal bases as to which these acts might be dealt with but unless otherwise majority, if not all offenders of these acts of malpractice are found guilty, the trend will carry through.

**Table 3.** Types of malpractice in the misconduct cluster, the offenders, the offended, and the decisions on the cases

Type of Malpractice (Misconduct)	Offenders	Offended	Decision
Sexual Harassment	Principal	Student	Guilty
Sexual Harassment	Teacher	Student	Guilty
Physical Abuse	Teacher	Student	Guilty
Oral Defamation	Teacher	Parent	Not Guilty

***Sexual Harassment***

Republic Act 7877, otherwise known as the Anti Sexual Harassment Act of 1995 claims that sexual harassment at work, education, and training related activities happen when an employer, co-worker, manager, supervisor, teachers, instructor, professor, coach, trainer, or any person who has authority, influence or moral ascendancy over another, demands, requests or requires a sexual favour from another. Specifically, in education, sexual harassment is committed when one is under the supervision or custody of the offender, one is under the tutelage of the offender, one is asked for a sexual favour in exchange for passing grades, honours, scholarships, monetary amounts, or considerations and when the act results to the intimidation of the offended.

***Physical Abuse***

The Violence against Women and their Children act (R.A. 9262) viewed physical violence as acts that include bodily or physical harm. Furthermore, in the education sector, Dep. Ed. Order No. 40, s. 2012, otherwise known as the Child Protection Policy also sets limitations towards punishments that school authorities, including teachers, may implement on the students. Section 3i defined child abuse as the maltreatment of a child, may it be habitual or not which includes physical abuse (section 3i-1). Section 3l defined violence against children committed in schools which include physical violence which refer to acts that inflict bodily and physical harm. Section 30, on the other hand pointed out acts of corporal punishment that should be imposed on the students. Corporal punishment was viewed as a set of activities that include physical, humiliating or degrading punishments. Specifically, in section 30-1, blows such as beating, kicking, hitting and spalling or lashing are not allowed to be imposed on students.

### **Oral Defamation**

Slander or oral defamation is the imputation that tends to cause dishonour, discredit or contempt of a person (Nicolas and de Vega, 2014). Furthermore, the Supreme Court defined oral defamation as the act of speaking base and defamatory words which tend to prejudice another in his reputation, office, trade, business or means of livelihood (“Badmouthed by your officemate?”, 2014).

From the data sources, what is most disturbing is the fact that members of the academe are involved in sexual abuses towards the students. It is important to note that not only teachers but also principals are being involved. Of the cases included in this research, most forms of abuse are headed to students and all sexual abuse cases are towards students. Although in majority, if not all of these acts, the offenders are found guilty, there must be an intervention to stop this trend considering these are just the reported cases.

### **Conclusion**

Malpractice is commonly associated in the medical field but the data sources reveal that the education sector is not free from such misdoings. One objective of this study is to come up with a typology about malpractice in education. The typology had two parts:(1) the types of malpractice in education in the corruption cluster which included five possible offenses Transparency International (2013); and (2)the types of malpractice in the misconduct cluster which revealed three possible offenses (The Florida Department of Education).Data available revealed that malpractice in education is not a prevalent occurrence. However, data sources only included court cases spanning from 1997-2017 that were already decided upon.

Newspaper articles reveal otherwise in cases involving principals. In the case of *Alliance of Concerned Teachers and Quezon City Public School Teachers Association v. Principal F* (Alcober, 2013), even though offenses range from the corruption cluster to the misconduct cluster and would have been added to the typology of the misconduct cluster (the offense being academic dishonesty), the case still is ongoing and the principal still retains her office. In the case of *Principal G* (Orias, 2016), a school principal in a central school in the southern part of the country, who is facing charges of sexual misconduct, the case has not progressed because of the alleged lack of due process which is a fundamental right of the accused. Because of this, even though in jail, he retains his position as principal (Orias, 2017).

Consequently, it can be said that malpractice in education involving principals is underreported because of fear, doubt or hesitation, or carelessness on the part of those who file the cases. It can also be a result of the misleading or scheming practices of the offenders to get away with their malicious acts.

In malpractice cases involving teachers as offenders, only one teacher was found not guilty, the rest were guilty of malpractice in education. The situation may be attributed to the lack of power, authority and influence teachers have against principals and other school administrators. Clearly, there is an imbalance in this perspective.

Although there are certain government rules and regulations, as well as special Dep. Ed. Orders that limits the activities of members of the academe to ensure malpractice does not happen in schools or in processes involving school activities, the question is in the implementation of the sanctions on these laws, rules and regulations. As the old saying goes, *there is a law for the rich, and a law for the poor*. In the same manner, it can be said that the law may apply for the powerful and sometimes not but applies to the lesser of power every single time.

Among the cases under the corruption cluster, illegal collections is the most frequent; while in the misconduct cluster, sexual harassment takes first place. Abuse in the workplace, especially in school setting, could have harmful outcome among the students (Blasé and Blasé, 2006). Outcomes would relate to the physical well-being of the offended to even psychological and emotional problems especially to those who were sexually abused. Milley (2017) stated that although maladministration may be infrequent, it is often severe and may have long lasting impact to the people and the organizations. In the same manner, although manifestations of malpractice in



education may be few and far in between, its effects on people, organizations, and the education sector as a whole is also long lasting.

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