

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
LOS ANGELES COUNTY SUPERINTENDENT OF SCHOOLS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LUIS ZAYAS,

Respondent.

Case No. 2010041042

**DECISION**

This matter was heard before the Commission on Professional Competence, Los Angeles County Superintendent of Schools, State of California, in Los Angeles, California, on September 29, 30, October 1, 4, and 5, 2010. The Commission consists of the following members:

Nancy Beezy Micon, Chairperson  
Administrative Law Judge  
Office of Administrative Hearings

Bernadine Hollingsworth, Member  
Selected by the Governing Board

Daniel Leonard, Member  
Selected by Respondent

Aaron O'Donnell, of the law firm Atkinson, Andelson, Loya, Ruud & Romo, represented the Los Angeles County Superintendent of Schools and the Los Angeles County Office of Education (LACOE).

Deborah Eshaghian, of the law firm Trygstad, Schwab & Trygstad, represented Luis Zayas (Respondent), who was also present.

The District seeks to dismiss Respondent on the grounds of immoral conduct, dishonesty, evident unfitness for service, and persistent violation of or refusal to obey school laws. Respondent disputes the factual allegations and denies that grounds for dismissal exist.

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To maintain confidentiality, this decision identifies students by their first name and first initial of student's surname. Further, it is ordered that all documents in the record containing student names shall be placed under seal, and shall be opened for public inspection only pursuant to the order of a court of competent jurisdiction.

Oral and documentary evidence was received at the hearing, and argument was heard. The Commission deliberated on October 6, 2010. The matter was then submitted for decision. After consideration of the entire record, the Commission unanimously makes the following factual findings and legal conclusions:

### FACTUAL FINDINGS

#### Jurisdictional Findings

1. Respondent is a permanent certificated employee of LACOE.
2. On February 14, 2010, LACOE gave notice to Respondent pursuant to Education Code<sup>1</sup> sections 44934 and 44936 of its intent to dismiss him. At the same time, LACOE served Respondent with notice of immediate suspension pursuant to section 44939. Respondent thereafter made a timely request for hearing.
3. On April 19, 2010, LACOE filed an Accusation seeking Respondent's dismissal. On April 20, 2010, Respondent filed a Notice of Defense.
4. On April 20, 2010, the parties stipulated to waive the 60-day time limit set forth in section 44944, and to waive statutory time limits for discovery. The parties agreed to the formal commencement of the hearing on September 29, 2010.
5. All prehearing jurisdictional requirements have been met.

#### Respondent's Background and Hiring by LACOE

6. Respondent received a Bachelor of Science degree, in business and human relations, from the University of San Francisco (USF). He then completed training at USF to qualify for a teacher credential, and obtained a bi-lingual lifetime certification.

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<sup>1</sup> All further statutory references are to the Education Code, unless otherwise specified.

7. Respondent began his teaching career in 1989. He worked briefly as a substitute teacher before his employment by LACOE in October 1989. In 1992, Respondent was transferred to work as a juvenile court instructor at Challenger Memorial Youth Center (Challenger), a school operated by Los Angeles County. In June 2008, Respondent's primary assignment was to teach mathematics and science to juvenile wards at Challenger.

8. Respondent has not taught since June 17, 2008, the day of the incident at issue in this matter. Initially, Respondent was absent due to a scheduled surgery. On June 25, 2008, Respondent was notified by LACOE that he was being moved from his classroom teaching assignment, effective on the date he returned from his medical release to return to work, pending LACOE's investigation into the incident.

9. Respondent has no record of formal discipline with LACOE.

10. Respondent attended training courses offered by LACOE and the Los Angeles County Probation Department on verbal and physical de-escalation techniques and strategies.

11. In August 2006, Respondent was directed to refrain from the use of profanity in his classroom, and from intimidation tactics toward his students. Respondent was given a "Conference Summary" following a meeting to discuss complaints the administrators had received about Respondent's classroom decorum. LACOE directed Respondent to comply with three points made during the meeting:

1. There should be no use of profanity by the teacher in class.
2. There should be no intimidation tactics used in class.
3. Mr. Zayas must follow the protocol and discuss the class problems with school Administration first.

12. In 2005 or 2006, Respondent was specifically instructed to refrain from writing gang names and then crossing them out on the board in his classroom due to problems this practice could cause between students in rival gangs. Respondent was advised that this type of conduct agitates the students, who feel disrespected by it. At hearing, Respondent admitted that he had been instructed not to cross out gang names. Respondent contended that he stopped the practice in 2005, after employees at the Probation Department told him it could cause gang related conflicts between students. Respondent denied that he engaged in this conduct after being sensitized to the possible ramifications in 2005.

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13. Student S■■■■ B., who attended Respondent's class for a few weeks around June 17, 2008, established that Respondent crossed out gang names in his classroom in 2008. S■■■■ B. testified that the other students in the classroom felt Respondent's conduct concerning the cross out of the gang names was "messed up and mean." S■■■■ B's testimony was credible. He was called as a witness by Respondent. He was not a student at Challenger before 2008. Thus, his identification of the date of the conduct is reliable.

14. Respondent admitted that, in the past, he used the term "sewer rat" when speaking in his classroom. The term is a derogatory term for a particular gang. Respondent claimed he was not aware of the derogatory nature of the term, and that he stopped using it when he became aware of how it could be perceived.

15. Respondent admitted that he refers to some of his students as being "retarded." At the hearing, Respondent used words to the effect: "If you act retarded, I will call you retarded." Respondent did not believe it was wrong to use the term.

16. Respondent's performance evaluations at Challenger were all satisfactory. However, in his performance evaluation for the 2005 to 2006 school year, Respondent wrote, in a section for teacher comments: "Students come with emotional problems labeled as Special Ed when the problem is behavioral and not academic." In his performance evaluation for the 2006 to 2007 school year, Respondent wrote: "Some students with learning disabilities – majority pretending to be low readers/low in math . . . ." (Emphasis in original.) Respondent's comments in his performance evaluations indicate intolerance for children who had been found by the school system to have learning disabilities.

#### The June 17, 2008 Incident

17. On June 17, 2008, Respondent was working in his usual assignment as a classroom instructor of juvenile wards attending school at Challenger. When class began, one of the students threw a book in the direction of another student. The book did not strike the student. In response, Respondent directed all of his students to go outside the classroom. Respondent followed the students outside, approached one of the students, J■■■■ R,<sup>2</sup> whom he believed had thrown the book, and a loud verbal exchange ensued between Respondent and J■■■■ R. Respondent, while arguing with J■■■■ R., stuck his finger in close proximity to J■■■■ R's face in a manner that was threatening and provocative. J■■■■ R responded by moving Respondent's hand away from his (J■■■■ R's) face. Respondent continued to point his finger at or near J■■■■ R's face, and J■■■■ R. continued to brush Respondent's hand away from his face. On the approximately third time that J■■■■ R. moved Respondent's hand away from his face, Respondent

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<sup>2</sup> Either initials, or the first name and first initial of a student's surname have been used to protect the students' privacy.

threw a punch, which hit J ■ R. squarely in the face. J ■ R. responded by striking Respondent. The altercation was broken up by probation deputies, who had been approaching the area. The approximately five deputies who were nearby when the incident took place were within five to sixty feet of the altercation. While J ■ R. was restrained by a deputy, Respondent approached and yelled at J ■ R., at least twice: "I know where you live." One of the deputies directed Respondent to leave the area. Respondent left. J ■ R. was taken to be seen by a nurse at the special handling unit (SHU) of the facility.<sup>3</sup>

18. Sharrieff Meyers (Meyers), a Deputy Probation Officer II for the Los Angeles County Probation Department, was a witness to the incident. Meyers testified at the hearing. He observed Respondent's class of approximately 15 students outside their classroom soon after the beginning of the school day. According to Meyers, the students were loud and not controlled. Meyers saw Respondent arguing with one of the students. The student had one arm in a cast in a sling. Respondent's face was red and he was pointing his finger in the student's face in a scolding manner. Meyers began moving to the area of the verbal confrontation. When Meyers was approximately five feet away from Respondent and the student, Meyers saw Respondent, in response to the student moving Respondent's hand away from his (the student's) face, punch the student in the face with a closed fist. The student immediately reacted by striking Respondent quickly three times. Meyers testified that seeing Respondent punch the student in the face was "surreal." He was shocked by Respondent's conduct. Meyers's testimony was supported by a written report, entitled "Probation Department Physical Intervention Report," which Meyers completed immediately following the June 2008 incident.

19. Written statements were also taken from the students in Respondent's class immediately following the June 2008 incident. While there were some differences in the students' accounts, the written statements corroborated that Respondent was the aggressor in the altercation, and that he punched student J ■ R.

20. J ■ R. was subpoenaed to attend the hearing as a witness. J ■ R., however, was an uncooperative witness. He denied any recollection of the incident, and claimed he could not recall writing a statement. According to J ■ R., he never saw the document, which contained his written statement, before the hearing. J ■ R.'s testimony and written statement are found not to be reliable evidence. The June 17, 2008 incident, however, was established through the testimony of other witnesses, including Respondent, and the written statements from other students and probation officers who witnessed the incident.

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<sup>3</sup> The nurse who saw J ■ R. following the incident on June 17, 2008, reported that the minor "denies injury" but that she observed some laceration, bruising, and swelling.

21. Student A■■■■ M., who witnessed the June 2008 altercation, testified at the hearing. A■■■■ M. was a credible witness. He described Respondent as having been an excellent teacher. He admitted that he was the student who threw the book in Respondent's classroom the morning of the incident because he found the student (S■■■■ B.) annoying. A■■■■ M., although reluctant to testify, acknowledged that he wrote a statement in response to a request to write what he saw. At hearing, A■■■■ M. re-read his written statement, which he described as an accurate statement of what happened. It states:

[T]he teacher had his finger in the minors [sic] face so the minor told the teacher to get his finger away from his face and the teacher didn't so the minor slapped his hand away and the teacher put his hand in his face again so the minor slapped it again . . . the teacher litery [sic] socked the minor in his mouth so the minor took flight and started bombing<sup>4</sup> on him.

22. Student S■■■■ B., the student toward whom the book was thrown in the classroom, was called as a witness by Respondent. S■■■■ B., however, corroborated Respondent's misconduct. S■■■■ B. established that Respondent started the fight. He also saw Respondent hit J■■■■ R. with his fist, and heard Respondent tell J■■■■ R.: "Don't forget, I know where you live. I'm going to go to your house and tell your family what you did."

*Respondent's Conduct After the June 2008 Incident (Dishonesty)*

23. Immediately following the altercation, Respondent wrote a "Behavior Report" concerning the conduct of J■■■■ R. Respondent's statement was false, and attempted to place blame for the altercation on the student. By making the statement, Respondent was attempting to shield himself from the potential discipline arising out of the incident. Respondent described the incident, as follows:

On the above date and time [8:58 a.m. on June 17, 2008], this teacher observed [J■■■■ R.] physically attack young Black Student, S■■■■ F. by throwing the book belonging to the student (T■■■■) who sits in front of him, at S■■■■. . . . S■■■■ was doing his work at this moment. I just happen to see J■■■■'s arm go down as the book flew across. I immediately put the class out to sort out who was not near where the book came from. When I tried sorting the group out and pointed at some students to form a separate line, J■■■■ slapped my hand (me the teacher) down. I

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<sup>4</sup> A■■■■ M. explained that the word "bombing" refers to student J■■■■ R. "swinging" at Respondent.

ignored it. He then slapped at my hand hard, when I moved it and turned to call RTC Staff, he then attacked me with his right closed fist thus striking me several times in the head and face area. He was then restrained . . . .

24. Respondent made contradictory statements about what happened. For example, the day following the incident, Respondent, accompanied by Patti Claude (Claude), his union representative, attended a meeting with administrators from the Challenger school and from the Probation Department. At that time, according to an e-mail sent after the meeting by Respondent's union representative, Respondent admitted putting his finger in the student's face. Respondent denied hitting the student. According to Claude's e-mail, Respondent claimed that it was possible he hit the student by accident, and apologized if that happened. Claude wrote: "We all agreed that Luis needs to avoid getting himself in this kind of position in the future (like putting his finger in someone's face), and that that behavior was what prompted the fight between student and teacher." Respondent was copied on the e-mail from Claude, and did not respond to correct the contents of the e-mail. Thus, at or near the time of the incident, Respondent admitted that his action of pointing his finger in the personal space of the student is what provoked the fight. At hearing and during the investigative interview, Respondent denied that he ever pointed his finger in the student's face. However, Claude testified at the hearing. She was credible in her confirmation that Respondent, during the meeting with administrators the day following the incident, admitted that he pointed his finger in the face of the student. According to Claude: "Getting in anyone's body space is not a good thing to do." Claude expressed that Respondent was a "fool" to get in someone else's body space.

25. Respondent's dishonesty continued when he was investigated by LACOE. In January 2009, while being interviewed by the LACOE investigator, Respondent asserted that he had been "attacked" by student J ■ R. Respondent denied that he ever put his finger in J ■ R.'s face. Respondent admitted only that, after J ■ R. was restrained, Respondent made the statement ("maybe twice"): "I know where you live." Respondent asserted the statement was "stupid" and a reference to the fact that lawyers were going to sue the student. Thus, even in his admission about making the statement, Respondent continued to falsely deny his culpability.

26. Respondent's dishonest conduct continued at the hearing. At the hearing, Respondent continued to assert that he had been attacked by student J ■ R., and that he did not point his finger in J ■ R.'s face. Respondent claimed he could not retreat from the confrontation.

27. Respondent's account of the incident, in the Behavior Report, at the interview, and at the hearing, was untruthful. In lying about the incident, Respondent engaged in dishonest conduct. The repeated lies demonstrate an intent to deceive. The failure to correct the false statements also indicates a lack of integrity.

### Evidence Presented in Mitigation

28. Ann Thart, a LACOE instructor currently assigned to teach at Camp Mendenhall, was a co-worker with Respondent for approximately 15 years. She described Respondent as a calm and patient person who maintained high professional standards. Thart believes Respondent is truthful. Thart never observed Respondent engage in any inappropriate conduct toward a student.

29. Mark Lewis, the president of the Los Angeles County Educational Association, who was a teacher for more than 35 years, has known Respondent for approximately 15 years. Lewis testified at the hearing. He described Respondent as an honest person who pays attention to his religious values. According to Lewis, Respondent has a reputation as a diligent teacher who is non-violent by nature.

30. Diane Jones, a resource teacher for LACOE, submitted a letter of support, dated September 24, 2010, for Respondent. Jones has known Respondent for approximately 10 years as a colleague. Jones has observed Respondent in his classroom, and believes he is an effective teacher with a great sense of humor. She never observed Respondent being inappropriate with a student, or touching a student inappropriately. Jones describes Respondent as being caring.

### CONCLUSIONS OF LAW

#### Evident Unfitness for Service

1. Section 44932, subdivision (a)(5), permits dismissal of a permanent employee for “evident unfitness for service.” Evident unfitness for service under this provision is established by conduct demonstrating that the teacher is “clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444. If the teacher is found unfit for service, “the next step is to determine whether the ‘unfitness’ is ‘evident’; i.e., whether the offensive conduct is caused by a defect in temperament.” (Id. at p. 1445.)

As a threshold matter, Courts require evaluation of a teacher's alleged misconduct in terms of its impact on fitness for service utilizing the following criteria first enunciated by the Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*): the likelihood that the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of teaching certificate held by the party involved; the extenuating or aggravating circumstances, if any, surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; and the extent to which disciplinary action may inflict an adverse impact or chilling



effect upon the constitutional rights of the teacher involved or other teachers. The determination of fitness for service required by *Morrison* is a factual one.

Respondent's conduct toward J ■ R. indicates unfitness to teach under the *Morrison* factors. The conduct involved a student during school hours. The student was adversely affected and the degree of adversity was significant. The student was injured, and he was placed in a special handling unit. Other students observing or hearing about the altercation, and other teachers at Challenger, were also adversely impacted as the conduct could diminish a student's regard for teachers at the school. The conduct occurred approximately 2 years before the hearing. Respondent holds a teaching certificate that is appropriate for the type of courses he was teaching at Challenger. In aggravation, the circumstances surrounding the incident establish that Respondent was responsible for causing the altercation. He engaged the student, and did not walk away when the situation escalated. Respondent was, in fact, responsible for escalating the encounter. Although a board policy exists on the topic, a teacher does not need a written policy to know that it is unacceptable to use corporal punishment against a student. There were no mitigating circumstances.

Respondent's dishonesty, in and of itself, demonstrates unfitness to teach under *Morrison*. His conduct adversely affected students and other teachers because it inhibited the District's investigation of the matter. The degree of adversity is significant. He attempted to place blame upon a student in custody. His motives were blameworthy, as he sought to shield his own misconduct. Respondent has expressed no remorse for his conduct, and does not accept responsibility for the incident.

The analysis of the *Morrison* factors demonstrates Respondent's present unfitness for service. Respondent's unfitness is evident, and is caused by his temperament. Respondent's disciplinary history shows that he was admonished for his use of intimidation tactics in 2005 or 2006. He claimed he stopped engaging in those tactics. Yet, in 2008, Respondent was still crossing out gang names, even though he knew the practice led to problems for the students. Even his choice of language, such as the use of the word "retarded," and the views he expressed in his performance evaluations concerning students with learning disabilities, indicates a temperamental defect. Respondent's existing deficiencies are the result of "temperamental defects or inadequacies."

Accordingly, as set forth in factual finding number 6 through 30, cause for dismissal has been established pursuant to section 44932, subdivision (a)(5).

### Immoral Conduct

2. Section 44932, subdivision (a)(1), permits dismissal of a permanent employee for "immoral or unprofessional conduct." Unprofessional conduct has been defined as conduct, measured by the *Morrison* factors, which indicates unfitness to teach. *Board of Education v.*

*Jack M.* (1970) 19 Cal.3d 691, 696-697 (*Jack M.*); *Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1173-74. The term “immoral conduct” as a basis for dismissal of teachers has long been included in section 44932, subdivision (a)(1), in its predecessors, and in other provisions pertaining to teachers employed in community college districts. The term was first discussed in the context of teacher dismissal in *Board of Education v. Weiland* (1960) 179 Cal.App.2d 808 (*Weiland*), and the court’s definition in that case has often been cited by other courts. (See, e.g.: *Palo Verde v. Hensey* (1970) 9 Cal.App.3d 967 (*Hensey*).) The *Weiland* Court stated:

“The term ‘immoral’ has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as wilful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.” (*Weiland*, supra, 179 Cal.App.2d at p. 811.)

Further, whether conduct is immoral must also be analyzed in terms of the teacher's fitness for service under the *Morrison* factors. (*Jack M.*, supra, 19 Cal.3d at pp. 696-697.)

Courts have found immoral conduct where a teacher stated that the district superintendent spent too much time “licking up the Board” as he simulated licking of the wall in an up and down manner (*Hensey*, supra); where a teacher knocked a sheriff deputy down with his car after the deputy discovered a partially naked female student in the car (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820); where a teacher performed oral copulation in a doorless toilet stall in a public restroom in a department store during business hours (*Governing Board v. Metcalf* (1974) 36 Cal.App.3d 546); and where a teacher purchased and received goods known to be stolen (*Pittsburg Unified School District v. Commission of Professional Competence* (1983) 146 Cal.App.3d 964).

Respondent engaged in immoral and unprofessional conduct in that his conduct was willful and showed an inconsiderate attitude toward good order and the public welfare. The student hit by Respondent was a juvenile prisoner at Challenger. Respondent created an encounter that could easily have been avoided. Probation officers were nearby but, rather than seek help from them, Respondent decided to confront the student. In doing so, Respondent pointed his finger in the face of the student, a provocative gesture that escalated the likelihood of a physical encounter. Then, without provocation, Respondent inflicted corporal punishment upon the student. Respondent did not require prior notice to know that he cannot strike a student. He was angry, and willfully acted upon his anger. Respondent’s conduct was flagrant and shameless, showing moral indifference to the opinions of respectable members of the community.

Respondent had received notice that he was not to engage in conduct that was intimidating, and that he needed to follow protocol in discussing any class problems with administrators. The June 2008 incident is serious enough, and Respondent's conduct during the incident and after it, displays such a lack of a moral compass, that dismissal is warranted based solely on this incident. Respondent inflicted corporal punishment upon a student. He failed to take responsibility for the conduct, and lied about it.

Accordingly, as set forth in factual finding numbers 6 through 27, cause exists to discharge Respondent for immoral and unprofessional conduct.

### Dishonesty

3. Section 44932, subdivision (a)(3), permits dismissal of a permanent employee for "dishonesty." In an often-cited definition, the court stated in *Hogg v. Real Estate Commissioner* (1942) 54 Cal.App.2d 712, 717:

"Dishonesty necessarily includes the element of bad faith. As defined in the dictionaries and in judicial decisions, it means fraud, deception, betrayal, faithlessness. [Citations.] As put by the court in *Alsup v. State*, 91 Tex. Cr. 224, 'dishonesty denotes an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray.' "

In *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 220, fn 12, the Supreme Court required application of the *Morrison* factors to the determination of "dishonesty." As the Court noted: "Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute 'dishonesty' as a ground for discipline." (Ibid).

Respondent's repeated lies concerning the incident, in his Behavior Report, during the investigation, and at the hearing, demonstrate lack of integrity and intent to deceive and thus constitutes dishonest conduct, by reason of factual finding numbers 17 through 27. This dishonesty establishes unfitness to teach under *Morrison*. Cause for dismissal, therefore, has been established pursuant to section 44932, subdivision (a)(3).

### Persistent Violation of Rules

4. Section 44932, subdivision (a)(7), permits dismissal of a permanent employee for "persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her."

A violation of section 44932, subdivision (a)(7), must also be established by reference to the *Morrison* factors. If unfitness to teach is shown, then the District must further establish that

Respondent's refusal to follow the laws or regulations was "persistent," i.e., "stubborn and continuing." (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1183; *Governing Board of the Oakdale Union High School District v. Seaman* (1972) 28 Cal.App.3d 77, 82 (*Seaman*).) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered "persistent." (See, e.g.: *Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317; *Seaman*, supra).

LACOE Board Policies and Division Handbook

LACOE Board Policy number 4029 prohibits acts or threats of violence by employees.

LACOE Board Policy number 4130 prohibits the use of corporal punishment in maintaining pupil discipline: "No LACOE employee shall inflict, or cause to be inflicted, corporal punishment upon a student. 'Corporal punishment' means the willful infliction of physical pain on a student."

LACOE Board Policy number 7310 prohibits discrimination and harassment in LACOE programs on the basis of race, gender, national origin, and disability.

LACOE Board Policy number 7400 and 7410 address student conduct and consequences. Concerning responses to student misconduct, the policy states: "LACOE staff members will address student misconduct with a clearly established, progressive line of discipline."

The LACOE Juvenile Court & Community Schools Division Handbook for 2008 contains guidelines for staff – student relationships. The Handbook states that "detained pupils are composed of a highly selective population whose potential for unpredictable behavior represent a constant reality for which all staff members should be aware." It advises that staff should "[a]void challenging or being challenged by pupils – always attempt to defuse or de-escalate a situation." In addition, staff are instructed to "[p]ractice composure in the presence of hostile behavior" and "[c]all for help before things get out of hand."

Respondent knew that he could not engage in corporal punishment of a student. He knew it was inappropriate to cross out gang names on his board. Yet, he engaged in this conduct. He also addressed his students in an inappropriate manner when he used the term "retarded." Respondent violated LACOE board policy number 4130, 7410, and directives in the LACOE division handbook. Cause for discipline under section 44932, subdivision (a)(7), has been established.

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5. All evidence presented in mitigation and rehabilitation has been considered. LACOE's dismissal of Respondent is upheld in light of the allegations established.

ORDER

Respondent Luis Zayas shall be dismissed from his employment with the Los Angeles County Office of Education.

DATED: January 11, 2011

COMMISSION ON PROFESSIONAL COMPETENCE

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NANCY BEEZY MICON, Chairperson  
Administrative Law Judge  
Office of Administrative Hearings

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BERNADINE HOLLINGSWORTH, Member

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DANIEL LEONARD, Member