

**BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA**

In the Matter of the Dismissal of:

DARIUS ADLE (EN 648026), a permanent
certificated employee,

Respondent.

OAH No. 2012050629

DECISION

This matter was heard by the Commission on Professional Competence (Commission) in Los Angeles, California, on January 7-10 and February 5-8, 2013. The Commission consists of Lidia Samayoa-Hill, Cynthia Van Slogteren, and Administrative Law Judge Erlinda G. Shrenger, Office of Administrative Hearings, State of California.

Tatiana Small, Attorney at Law, Fagen Friedman & Fulfroost LLP, and Katrina Campbell, Associate General Counsel, Los Angeles Unified School District, represented the Los Angeles Unified School District (District).

Daniel J. Kolodziej, Attorney at Law, Trygstad, Schwab & Trygstad, represented Darius Adle (Respondent), who was present for all days of the hearing.

Oral and documentary evidence was received and argument was heard. The record was held open until February 19, 2013, for the submission of opposition and reply briefs related to Respondent's motion to dismiss, which was filed during the hearing on February 7, 2013. The parties timely filed their briefs. The District's opposition was marked as Exhibit 28. Respondent's reply was marked as Exhibit TT. The record was closed and the matter was deemed submitted for decision on February 19, 2013. The Commission thereafter deliberated in executive session. After due consideration, the Commission makes the following Factual Findings, Legal Conclusions, and Order.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent is a permanent certificated employee of the District.
2. On March 2, 2012, written charges, duly signed and verified by Vivian K. Ekchian, Chief Human Resources Officer of the District, were filed with the Board of

Education of the District (Board), which requested that the Board give notice to Respondent of the Board's intention to immediately suspend him without pay and dismiss him at the expiration of 30 days from service of the notice unless he demanded a hearing.

3. On March 14, 2012, Respondent was served by certified mail with a notice of the Board's intention to dismiss him from employment and of his placement on immediate unpaid suspension. A copy of the written charges was enclosed with the notice.

4. By letter dated April 10, 2012, Respondent objected to the written charges against him and requested a hearing.

5. On May 17, 2012, Vivian K. Ekchian, Chief Human Resources Officer of the District, executed the Accusation in that capacity on behalf of the District, which requested the termination of Respondent's employment with the District. The Accusation contains eight charges, discussed in more detail below.

6. On May 21, 2012, Respondent served a Notice of Defense, which contained a request for the hearing that ensued.

Respondent's Background

7. Respondent is 58 years old. Respondent speaks six languages: Spanish, French, Persian, Portuguese, Italian, and English. He goes to France one or two times a year, during school breaks, to visit his mother, sister, and other relatives.

8. Credential. Respondent holds a multiple subject credential in elementary teaching, and single-subject credentials in French and Spanish.

9. Employment with District. Respondent began his employment with the District in 1993 as an intern. He taught at Commonwealth Elementary School for two years, from approximately 1993 to 1995. He left the District and taught at Santa Monica Unified for one year. Respondent then returned to the District in 1997. He was a teacher at Bell High School for five years, where he taught French and life skills. He then taught French at Wilson High School. Respondent was a French teacher at Garfield High School for the 2009-2010 school year. Garfield changed from a year-round school to a traditional calendar and let go of 82 teachers, including Respondent. During the summer of 2010, Respondent was offered a position to teach French and Spanish at Downtown Magnet High School. He taught AP Spanish, among other classes, at Downtown Magnet High School from September to December 2010. The District removed Respondent from his classroom at Downtown Magnet on December 2, 2010.

General Findings Regarding Charges 1 through 4

10. EF Tours is a private tour company that organizes student tours to Europe. EF Tours provides information and brochures about their tours to teachers and schools. EF

Tours and other similar tour companies conducted workshops at the District's "World Languages and Culture" conference in March 2007. The purpose of the workshops was to motivate students to go on these tours. EF Tours allows adults (teachers) to go on the trips for free as chaperones if six students sign up for the trip.

11. The 2009-2010 school year at Garfield High School began in July 2009. Respondent taught French I and II. L T. (L) was a ninth grade student who was originally enrolled in Spanish but transferred to Respondent's French class because he wanted to go to Paris with EF Tours. L approached Respondent and asked if Respondent was interested in the EF Tours trip to Paris, France. At that point, Respondent was not involved in any trip with EF Tours. Respondent testified that he told L the trips were taken during vacation time and he "brushed off" L. One week later, to Respondent's surprise, L brought him the EF Tours application and signed parent consent form and \$1,000 cash for the downpayment for the trip. Respondent contacted EF Tours, changed L's cash to a money order, and mailed it to EF Tours.

12. L told Respondent that he knew of another student interested in the trip. S T, another school employee, was interested in having her sister, J T. (J), go on the trip. J was not one of Respondent's students. As of August 2009, Respondent was not intending to go on the trip to Paris with EF Tours. He was not intending to pay for a trip to Paris and chaperone students. Respondent travels to Europe for free using his frequent flier miles.

13. Respondent spoke to L's parents about the trip at the first parent-teacher conference of the school year. He told the parents he had given L's money to the tour company, and he was not sure if he [Respondent] was going on the trip. As of February 2010, Respondent was not expecting to go on the trip. When it looked like the students would only be able to go if Respondent went, he tentatively agreed. The tour company was expecting him to pay full fare because less than six students signed up for the trip. Respondent asked to book his own flight using his frequent flier miles but the tour company refused. Respondent ended up paying full fare for the trip, as he was concerned about L and J having to pay a penalty if he canceled. Eventually, the trip to Paris, France through EF Tours was arranged for April 2010, during spring break.

14. Respondent, L and J were scheduled to fly from Los Angeles on the morning of April 16, 2010. The flight was cancelled due to a volcanic eruption in Iceland. J left the airport with her parents. Respondent found L at the airport after having him paged. L was alone and indicated to Respondent that his parents were not available to pick him up from the airport. At Respondent's suggestion, he and L took a bus to Union Station, and then a taxi to Respondent's apartment, where Respondent retrieved his car keys and drove L home in his personal car.

15. The trip to Paris through EF Tours was rescheduled. Respondent, L, and J were in Paris the week of July 8, 2010. The trip was during summer vacation and school was not in session. J had graduated from Garfield High School in June.

Respondent was no longer a teacher at Garfield High School, as he was displaced but found new employment at Downtown Magnet High School.

Charges 1 and 3

16. It was not established that, in April 2010 and July 2010, Respondent failed to follow the District's policy regarding field trips and arranged a non-District-sponsored field trip, without prior administrative authorization, to Paris, France with students L ■ and J ■.

17. The District's policy on field trips is set forth in a Field Trips Handbook and Revised Procedures dated July 24, 2006 (Handbook). (Exh. 18.) The Commission finds that the Handbook did not apply to the Paris trip taken through EF Tours. The Paris trip was not a "field trip," which the Handbook defines as "an umbrella term for all District-authorized trips." The Paris trip was scheduled when school was not in session, during spring break in April and summer vacation in July. The trip was not funded or organized by the District. EF Tours organized the trip. L ■ paid for the trip himself and his parents signed the EF Tours consent form. Respondent sent L ■'s forms and deposit to the tour company. L ■ was the one who first approached Respondent about taking the trip, not vice-versa. Further, the Handbook was routed to administrators, principals, and counselors, but not to teachers.

Charge 2

18. Charge 2 of the Accusation relates to the events on April 16, 2010, when L ■ was present at Respondent's apartment.

19. When Respondent and L ■ arrived at the apartment, Respondent's roommate was still at home and getting ready for work. Respondent had been calling the roommate all morning, but the roommate did not answer. Respondent explained the flight cancellation to the roommate. Respondent and L ■ spent no more than 10 minutes at Respondent's apartment. During that time, Respondent telephoned his mother in Paris and his girlfriend to let them know about the flight cancellation. L ■ was in the kitchen eating some fruit the roommate had given him and chatting with the roommate. Respondent got his car keys and drove L ■ home in his personal car.

20. (A) It was not established that, at the apartment, Respondent offered L ■ breakfast, and L ■ declined it and stated he wanted to go home.

(B) It was not established that Respondent sat on the sofa staring at L ■, causing him to be fearful.

(C) It was not established that Respondent told L ■ that they should take a nap in his bedroom, and L ■ declined and told Respondent he wanted to go home.

(D) It was not established that Respondent and L ■ stayed at Respondent's apartment for approximately 20 minutes.

(E) The District presented the testimony of L█ to prove the above allegations. As an initial matter, the Commission did not find persuasive the District's characterization of the events on April 16, 2010, as a scheme by Respondent to lure L█ to his apartment. That was not the case. Clearly, the events were precipitated by the unexpected cancellation of their flight due to the volcanic eruption in Iceland. L█'s testimony that Respondent sat on the sofa and stared at him was not credible. There was nothing in L█'s story to explain why Respondent would just sit on the sofa and stare at him. L█ testified that he thought it was "weird" that Respondent asked him to take a nap in his bedroom, and this made him feel uncomfortable. L█'s subsequent conduct, however, did not indicate he was uncomfortable being around Respondent. On April 20, 2010, he arranged to meet Respondent at a French film festival, watched a movie with Respondent, and went to a crepe restaurant with Respondent before taking the train home. Respondent had sent an email to his French students telling them about a French film festival for students being held at the Directors Guild of America Theater. After the Paris trip was cancelled, Respondent offered to buy a ticket for L█ and his mother to attend the film festival, but it was L█ who told Respondent to buy just one ticket for him. L█'s testimony that he went to meet Respondent only to tell him he no longer wanted to go on the Paris trip was not credible. L█ had other means to convey that information to Respondent that would not require him to meet with a person he was uncomfortable to be around, such as email or the telephone. Further, L█ remained in Respondent's French class for the remainder of the school year. He did not attempt to transfer to another class. Nor did he report any incident occurring at Respondent's apartment to his parents, another teacher, or any other adult. Significantly, L█ went to Paris with Respondent and J█ when EF Tours rescheduled the trip for July 2010.

21. (A) It was established that Respondent used his personal vehicle and drove L█ home, but the evidence was insufficient to establish that, on the way to L█'s home, Respondent drove L█ to a supermarket to show him French food.

(B) The Commission finds that Respondent's use of his personal vehicle to drive L█ home was appropriate and mitigated by the circumstances. The District's Code of Conduct with Students (Exh. 16) enumerates certain conduct and situations that teachers are "cautioned to avoid" including, but not limited to, transporting students in a personal vehicle "without proper written administrator and parent authorization forms on file in advance." Although Respondent did not have a permission slip from L█'s parents to drive their son in his personal car, the parents did sign the EF Tours consent form. On April 16, 2010, Respondent was acting as L█'s adult chaperone, on behalf of EF Tours, and was responsible to ensure L█ made it home safely from the airport, which he did. The Commission finds that Respondent's use of his personal vehicle to drive L█ home was appropriate and the most practical way to get L█ home and for Respondent to get back to his apartment. The Commission finds that Respondent acted responsibly and appropriately in not leaving L█ at the airport alone after their flight was cancelled and L█'s parents were not available. In fact, it would have been irresponsible if Respondent had not made arrangements for L█ to get home.

Charge 4

22. Charge 4 of the Accusation relates to events during the Paris trip in July 2010.

23. It was not established that Respondent caused L■ to be scared when L■ saw condoms in Respondent's open luggage during departure from the airport. Respondent admitted he had condoms in a toiletry bag that was packed in his checked luggage, but he did not have condoms in his carry-on luggage. L■ testified he thought it was "weird" that Respondent brought a condom and it made him nervous. L■ did not report the incident to anyone at the airport but instead boarded the airplane with Respondent and J■ for the flight to Paris.

24. The EF Tours tour group had approximately 40 to 50 students and 12 adult chaperones. While in Paris, the entire tour group traveled from venue to venue as a group most of the time. On at least one occasion during the tour, the students were given 90 minutes of free time during which they could explore on their own. However, they were instructed to return to a designated meeting place and time.

25. It was not established that Respondent failed to properly supervise L■, causing L■ to be separated from the group in Paris because L■ was avoiding Respondent. During "free time," L■ left the rest of the group and went to a shopping mall on his own. The students were instructed to return to the Paris Opera House after 90 minutes. L■ got lost returning to the Opera House because, as he admitted, he got confused by the streets. He used his iPod to get the hotel's address and took a taxi back to the hotel. In the meantime, when L■ did not return to the Opera House at the designated meeting time, Respondent waited for him for over an hour.

26. It was not established that Respondent touched L■'s upper arm and told him, "You have muscles." On one day of the tour, the entire group was traveling on the Paris subway. L■ testified that, on the subway, Respondent squeezed L■'s upper arm and commented on his muscles. L■ testified that Respondent's comment made him feel bad. L■ did not report the incident to any of the other adult chaperones or other students in the tour group. Respondent denied commenting on L■'s muscles or touching his arm. No evidence was presented that anyone else besides L■ heard the comment or saw Respondent squeeze L■'s arm. The Commission did not find L■'s testimony credible.

27. It was not established that, while walking by a newsstand with L■, Respondent gestured toward gay, pornographic magazines and said that he would buy L■ a magazine to "help him become a man." L■ testified that this incident occurred while the entire tour group of 40 to 50 students and the adult chaperones were walking down the street. L■ testified he thought Respondent's comment was weird and he was mad at Respondent, but he did not report the comment to any of the other adult chaperones on the tour. The Commission did not find L■'s testimony credible. No evidence was presented that any other member of the tour group heard the comment claimed by L■. Respondent denied

making the statement and testified credibly that he was shooing the students along when they began gathering in front of the magazine stand to look at magazines.

28. It was not established that Respondent touched L■■'s face while posing for a picture.

29. It was not established that Respondent invited L■■ to his hotel room to show L■■ things that he had purchased. Respondent testified credibly he did not make purchases on this trip due to the poor exchange rate. Respondent travels to Paris a few times a year because his mother lives in Paris, so he has other opportunities to buy things in Paris when the exchange rate is more favorable.

30. It was not established that Respondent told L■■ that he would return to Paris or Europe with L■■ when L■■ turned 18 years old.

31. It was not established that Respondent kissed L■■ goodbye on the cheek when L■■ boarded a taxi headed to the airport. On the day of his departure from Paris, L■■ took a shuttle bus, not a taxi, to the airport. L■■ had overslept and Respondent went to his room to wake him up. L■■ told Respondent he wanted to sleep and would take a taxi to the airport later. That was not possible, however, as the other students going to the airport were already on the shuttle bus and waiting for L■■. L■■ had to rush but he got on the shuttle bus to the airport.

32. L■■ returned home from Paris on July 13, 2010. Respondent stayed in Paris and returned to Los Angeles on July 18, 2013.

33. It was not established that Respondent called L■■'s home several times after the Paris trip, and during one call, invited L■■ to Universal Studios but L■■ declined. When Respondent returned to Los Angeles, he telephoned L■■'s home one time to check that L■■ made it home safely. This was corroborated by Respondent's phone records.

Other Findings Regarding Charges 2 and 4

34. L■■ made no report in and around April 2010 and July 2010 about any inappropriate comments or behavior by Respondent at his apartment or during the Paris trip. L■■ did not make any report about Respondent until November 2010, when he confided in his tenth grade French teacher, Ms. Arenas, about incidents at Respondent's apartment in April and the Paris trip in July. Ms. Arenas expressed negative feelings about Respondent to the class, which then prompted L■■ to talk to her privately about Respondent. Ms. Arenas filed a suspected child abuse report, which was investigated by the Los Angeles County Sheriff's Department and by the District. The Sheriff's investigation concluded there was no child abuse.

35. The District's own investigation began in November 2010 and concluded in August 2011. L■■ told the District's investigator that he felt uncomfortable when

Respondent sat on the sofa and stared at him, and he thought Respondent was going to "rape" him when he suggested that they take a nap in his bedroom. L█ made a similar statement when he told the investigator that he saw condoms in Respondent's open luggage during departure from the airport in July, which made him think that Respondent was going to "rape" him in Paris. At this hearing, L█ did not use the term "rape" during his testimony.

36. (A) The Commission finds that L█'s reports about Respondent may have been influenced by Ms. Arenas and others. The testimony of L█ and another teacher (Alonso Rolland-Estrada) established that Ms. Arenas did not get along with or speak favorably of Respondent. The District's investigation report noted that L█ told Ms. Arenas about his claims "[w]ith prompting of the teacher." Ms. Arenas filed the Suspected Child Abuse Report. The Sheriff's Department investigated and found no child abuse.

(B) Further, the Commission noted that L█ used the same gestures or phrases that made his testimony appear as if he was coached on how to answer questions in a certain way. The manner in which L█ used the gestures and phrases seemed unnatural and noteworthy. For example, L█ always grabbed and squeezed his upper arm when he spoke of Respondent making a comment about his muscles on the Paris subway. He repeated phrases indicating, for example, he was "just a kid," he was 15 then, the incidents happened three years ago, and he didn't know how to answer. L█ repeated the phrases often during cross-examination by Respondent's counsel but his memory seemed clear during direct examination by the District's counsel. Also noteworthy during cross-examination was that L█ often did not seem to understand a question the first time it was asked, questioning what words meant or saying he didn't understand what was being asked.

37. Evidence was presented of email communications between Respondent and the Garfield students in his French classes, including L█. The Commission finds that Respondent maintained the appropriate teacher-student boundary in the emails. He signed the emails in a formal manner as "De ton prof de francais, Monsieur Adle." He discussed class related matters in his emails with students. He pointed out corrections in French grammar or language in the students' emails. Respondent did not include personal matters about himself in the emails with his French students. Evidence was presented of emails initiated by L█ to Respondent. In his emails to Respondent, L█ wrote of personal matters, such as outings or vacations taken with his family.

Charge 5

38. It was not established that beginning September 2010, and ending in December 2010, Respondent, while a teacher at Downtown Magnet High School, brought five bottles of wine and/or liquor to his Spanish class.

39. It was established that Respondent kept two empty Spanish wine bottles in his classroom. Respondent's credible testimony established that he used the empty wine bottles as "realia" for one classroom lesson teaching aspects of Spanish culture. The two empty wine bottles were part of a display that also included a container of plastic foods, paper

decorations, wooden boxes, money from Spanish-speaking countries, three flags, photos of Spanish artists, and one bottle of non-alcoholic Sangria. Respondent testified that he kept the two empty bottles in a locked filing cabinet. Respondent told the District's investigator that he used two empty and washed red and white Spanish wine bottles as "manipulatives," and he had been doing so for the last 14 years as part of an approved and appropriate lesson plan that included wine and food pairing and the dangers of alcohol consumption.

40. The Commission finds that use of the two empty wine bottles was appropriate "realia" for Respondent's Spanish class. Brandon Cohen (Cohen), principal at Downtown Magnet High School, testified that wine is not appropriate to use as "realia" in a classroom because wine is for persons over age 21, there is no lesson where wine is appropriate, and there are alternatives to bringing a wine bottle into a classroom, such as using photos or images of wine. However, this case involves empty wine bottles in the classroom, not wine. The Commission finds that empty wine bottles pose no more of a threat to students than would photos or images of wine or wine bottles suggested by Cohen. Alonso Rolland-Estrada has been a French and Spanish teacher for the District for 13 years. Estrada noted that the California foreign language standards include teaching cultural aspects of a language in order to prepare students to participate in the outside world. Estrada opined there is no problem using empty wine bottles in the classroom, but alcohol is never allowed in class. The Commission agrees with Estrada's opinion that empty wine bottles are an appropriate use of realia in teaching a foreign language class. The Commission agrees with Respondent that the empty wine bottles served a cross-curriculum purpose, teaching aspects of science, math, and the dangers of alcoholism. Respondent testified he is sensitive to the issue of alcoholism as he has family members affected by alcoholism.

41. (A) The Commission finds that the District's evidence was insufficient to establish Charge 5. The District presented the testimony of substitute teacher Yussef Evereteze (Evereteze) and principal Cohen. Evereteze was the substitute teacher who took over Respondent's classroom when Respondent was removed on December 2, 2010. Evereteze testified he found five alcoholic beverage bottles in Respondent's classroom. He recognized the bottles as being for alcoholic beverages (wine and hard liquor) based on their color and shape. Three of the bottles contained varying amounts of liquid, which Evereteze believed was alcohol based on the smell when he opened the bottles. He did not taste the liquid. Evereteze threw away the two empty bottles and brought the other three bottles to the main office. Cohen testified that Evereteze brought him two wine bottles that he reported finding in Respondent's classroom. Cohen testified that he gave the two bottles to the District's investigator. The District's investigation report includes a photo of two wine bottles, which are identified as "two of the empty wine bottles found in [Respondent's] DMHS classroom." (Exh. 5, p. 33A.)

(B) The District failed to explain the discrepancy between Evereteze's and Cohen's testimony regarding the number of bottles found in Respondent's classroom and whether or not they contained any liquid. Evereteze testified he brought three bottles to the main office, but Cohen testified he received two wine bottles, which he gave to the investigator. Even as late as October 17, 2011, the District was still unsure of the number of

bottles found in Respondent's classroom. The conference memo dated October 17, 2011, indicated Respondent brought "at least two bottles and up to five bottles of wine" to his classroom. (Exh. 3, p. 15.) The District presented no evidence that the liquid in the three bottles found by Evereteze was, in fact, wine or liquor. No evidence was presented of what happened to the liquid in the three bottles Evereteze brought to the main office. The two bottles included in the District's investigation report were described as "empty." No evidence was presented of the District preserving a sample of the liquid and testing it to confirm that the liquid was wine or liquor. The District's evidence was insufficient to establish that the bottles Evereteze found in Respondent's classroom were brought there by Respondent or that they belonged to him. Evereteze's testimony that students in the class told him the bottles belonged to Respondent was uncorroborated hearsay and given no weight. Evereteze testified he did not recall the names of the students, and he did not take the students to the office or write down their statements.

Charge 6

42. It was not established that beginning September 2010, and ending in December 2010, Respondent offered to pay student W [REDACTED] B. 10 dollars to grade papers.

43. W [REDACTED] was a tenth grade student in Respondent's AP Spanish class, which was conducted entirely in Spanish. The topic of students helping to grade papers came up one day in the AP Spanish class. Some students commented that they saw Respondent grading papers after school and offered to help. Respondent mentioned that he knew of two students at Wilson High School who were paid to grade papers and other students who graded papers for credit. Respondent explained that he preferred to grade papers himself and declined the students' offers to help. The Commission is persuaded by Respondent's explanation that W [REDACTED] misunderstood his comments about other students at Wilson High School receiving pay or credit to help teachers grade papers. The AP Spanish class was conducted entirely in Spanish, thus easily causing misunderstanding. The Commission finds that the AP class may have also been beyond W [REDACTED]'s abilities at the time, as he often emailed Respondent asking for clarification about homework assignments. No evidence was presented that Respondent, in fact, paid W [REDACTED] or any other student 10 dollars to grade papers. W [REDACTED] testified that Respondent's offer to grade papers was "no big deal." W [REDACTED] testified that he had volunteered to help Respondent grade papers even before he thought Respondent offered him 10 dollars to do so.

Charge 7

44. It was not established that beginning in September 2010, and ending in December 2010, Respondent announced to his third period Spanish class that if students needed help with their assignments, they could come to his home for tutoring sessions.

45. The Commission finds that Respondent testified credibly in denying this allegation. His testimony established that some students in the AP Spanish class were very far behind in preparing to take the AP exam in May. He told the students they should not

wait to cram study in April, and they should not expect him to provide extra help because "the days of Jaime Escalante were over," which was a reference to the movie "Stand and Deliver" about Escalante, who was a teacher at Garfield High School. For the same reasons stated in Finding 43, the Commission is persuaded by Respondent's explanation that W[REDACTED] misunderstood his comments when he claimed that Respondent told him that, if he needed help, he could come to Respondent's house to study. No evidence was presented of any other student in the third period Spanish class reporting about this offer to tutor. No evidence was presented that W[REDACTED], or any other student in the third period Spanish class, went to Respondent's home for tutoring sessions.

Charge 8

46. It was not established that beginning September 2010, and ending in December 2010, Respondent suggested to K[REDACTED] L., a female student, that she should be paid to record student grades in Respondent's grade book. The District presented the testimony of student V[REDACTED] M., which was insufficient to establish this allegation. V[REDACTED] testified that Respondent offered money to W[REDACTED] and K[REDACTED]. She testified she knew about the offer because W[REDACTED] told his mother, and then W[REDACTED]'s mother told her mother. She also heard K[REDACTED] tell a friend about the offer. V[REDACTED]'s testimony was given no weight because it was based on multiple levels of hearsay and not on her direct knowledge. The District presented no other evidence to establish this charge.

LEGAL CONCLUSIONS

Respondent's Motion to Dismiss

1. Respondent contends that the Commission has no jurisdiction in this case because the District did not offer any evidence before resting its case that it complied with the requirements of Education Code section 44934.¹ Respondent's motion is denied. The Administrative Law Judge, in her discretion, allowed the District to reopen its case and present documentary evidence related to its compliance with section 44934. (District's exhibits 22-27.) The hearing before the three-member Commission on Professional Competence is governed by section 44944, which provides, in part, that such hearing "shall be initiated, conducted, and a decision made" in accordance with the Administrative Procedure Act (APA), codified at Government Code section 11500 et seq. (Ed. Code, § 44944, subd. (a)(1).) A hearing under the APA is initiated by the filing of an accusation. (Gov. Code, § 11503.) A respondent is entitled to a hearing on the merits upon timely filing a notice of defense. (Gov. Code, § 11506.) Here, the Commission's jurisdiction was established by the filing of an accusation by the District and a notice of defense by Respondent. The purpose of this hearing is for the Commission to make a decision based on the Accusation and Statement of Charges that Respondent should be dismissed, he should be suspended, or he should not be dismissed or suspended. (Ed. Code, § 44944, subd. (c)(1).)

¹ All further statutory references are to the Education Code, unless otherwise specified.

The requirements of Education Code section 44934 are outside the scope of the hearing. The remedy for a party claiming a school district's non-compliance with section 44934 would be through a mandamus action in superior court under Code of Civil Procedure sections 1085 or 1094.5.

Commission's Conclusions on Accusation and Statement of Charges

2. The standard of proof in this proceeding is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

3. The Commission considered the factors enumerated in Evidence Code section 780 in determining the credibility of witness testimony. Those factors are: (a) his demeanor while testifying and the manner in which he testifies; (b) the character of his testimony; (c) the extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies; (d) the extent of his opportunity to perceive any matter about which he testifies; (e) his character for honesty or veracity or their opposites; (f) the existence or nonexistence of a bias, interest, or other motive; (g) a statement previously made by him that is consistent with his testimony at the hearing; (h) a statement made by him that is inconsistent with any part of his testimony at the hearing; (i) the existence or nonexistence of any fact testified to by him; (j) his attitude toward the action in which he testifies or toward the giving of testimony; and (k) his admission of untruthfulness. (Evid. Code, §780, subds. (a)-(k).)

4. The grounds for the dismissal of a teacher in this state are enumerated in Education Code section 44932. In this case, the District relies on the grounds stated in subdivisions (a)(1) (immoral conduct or unprofessional conduct), (a)(4) (unsatisfactory performance), (a)(5) (evident unfitness for service), and (a)(7) (persistent violation of or refusal to obey school laws of the state or reasonable regulations). The District also relies on the grounds for immediate suspension stated in section 44939 of willful refusal to perform regular assignment without reasonable cause, and immoral conduct.

5. It was not established by a preponderance of the evidence that Respondent has engaged in any immoral conduct pursuant to sections 44932, subdivision (a)(1), and 44939. (Factual Findings 7-46.)

6. It was not established by a preponderance of the evidence that Respondent has engaged in any unprofessional conduct pursuant to section 44932, subdivision (a)(1). (Factual Findings 7-46.)

7. It was not established by a preponderance of the evidence that Respondent has engaged in unsatisfactory performance pursuant to section 44932, subdivision (a)(4). (Factual Findings 7-46.)

8. It was not established by a preponderance of the evidence that Respondent is evidently unfit for service pursuant to section 44932, subdivision (a)(5). (Factual Findings 7-

46.)

9. It was not established by a preponderance of the evidence that Respondent has persistently violated or refused to obey the school laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of the District, pursuant to section 44932, subdivision (a)(7). (Factual Findings 7-46.)

10. It was not established by a preponderance of the evidence that Respondent willfully refused to perform regular assignments without reasonable cause, pursuant to section 44939. (Factual Findings 7-46.)

11. Based on the above, cause does not exist to dismiss Respondent from employment with the District pursuant to section 44932, subdivision (a), in that no cause for discipline was established. (Factual Findings 7-46; Legal Conclusions 5-9.)

12. Based on the above, cause does not exist to immediately suspend Respondent from employment with the District pursuant to section 44939, in that no cause for immediate suspension was established. (Factual Findings 7-46; Legal Conclusions 5 and 10.)

ORDER

The Accusation against Respondent Darius Adle is hereby dismissed and he shall remain employed with the Los Angeles Unified School District.

DATED: May ___, 2013

LIDIA SAMAYOA-HILL
Member
Commission on Professional Competence

DATED: May ___, 2013

CYNTHIA VAN SLOGTEREN
Member
Commission on Professional Competence

DATED: May ___, 2013

ERLINDA G. SHRENGER
Administrative Law Judge, Member
Commission on Professional Competence