

**REPORT BY THE STATE AUDITOR
OF CALIFORNIA**

**A REVIEW OF THE DEPARTMENT OF EDUCATION'S
COST AND DEVELOPMENT OF THE
CALIFORNIA LEARNING ASSESSMENT SYSTEM**

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KURT R. SJOBERG
State Auditor

August 22, 1994

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94109

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning its review of the Department of Education's (department) cost and development of the California Learning Assessment System (CLAS).

This report concludes that the department used various groups to develop the CLAS exam, including advisory committees, development teams, and review panels. This development framework was similar to the process followed in earlier exams. The department tried to create review panels and teams that reflect the diversity of California's population. However, it did not have specific written procedures that it used to select members for each of the various groups involved in the exam development process. As a result, the review panels and teams that it established were not always representative of California's population.

This report also concludes that the department used its contract with the Far West Laboratory for Educational Research and Development (Far West) to circumvent the State's civil service system. Far West paid the salaries of 28 contract employees as instructed by the department. Because it used Far West to pay these employees, the department paid administrative fees, in excess of the salaries, of approximately \$318,000.

In the area of costs, the department paid travel costs to Far West and the county offices of education for Sacramento and Los Angeles that exceeded the maximum reimbursement rates allowable by state rules. Further, the department did not require contractors to submit written progress reports to support the monthly invoices, incorrectly calculated retention amounts, and issued a duplicate payment for one invoice.

Finally, although the department appropriately used a competitive bidding process to award the CLAS contracts, for 13 contracts and 3 interagency agreements, the contractor performed work or provided services before approval of the contract.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kurt Sjoberg".

KURT R. SJOBERG
State Auditor

A Review of the Department of Education's
Cost and Development of the
California Learning Assessment System

94109, August 1994

California State Auditor
Bureau of State Audits

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Summary

Results in Brief With the enactment of Chapter 760, Statutes of 1991 (SB 662), the Legislature directed the State Board of Education and the Department of Education (department) to develop and implement a system to assess students. This system should have, as its primary purpose, the improvement of instruction in California's public schools. In response to this legislative mandate, the department began to develop a more comprehensive, statewide assessment system with various components including the California Learning Assessment System (CLAS) exam. As required by SB 662, the department developed four exams to address the specific content areas of reading, written expression, mathematics, science, and history-social science. The department combined the content areas of reading and written expression into one exam, commonly referred to as the English-language arts exam.

To support the development and implementation of the CLAS exam, SB 662 included an appropriation of approximately \$9.3 million to the department for fiscal year 1991-92. For fiscal years 1992-93 and 1993-94, the Legislature appropriated additional funding of approximately \$14.8 million and \$25.9 million, respectively. However, in the budget act for fiscal year 1994-95, the governor eliminated additional funding for the CLAS with the intention that the funds be set aside until legislation is enacted to reform the testing process. The 1994-95 budget bill also renamed the CLAS to the California Comprehensive Testing Program.

The purpose of this audit was to review the department's process for developing items for the CLAS exam. In addition, we conducted this audit to determine whether the department complied with state laws and regulations when it awarded contracts for developing and implementing the CLAS exam. Finally, we conducted the audit to report on the nature and amount of funds expended for the CLAS exam from January 1992 through May 1994 and to determine the appropriateness of the expenditures. During our review we noted the following:

- The department used various groups to develop the CLAS exam, including advisory committees, development teams, and review panels. This development framework was similar to the process followed by the department in earlier exams. The development

teams primarily consisted of teachers and other specialists who were responsible for generating and developing the exam items. The assessment advisory committees and balanced treatment review panels, that included educators, administrators, and public members, provided input to the development teams for consideration. In addition, the development teams received input from teachers and students who participated in various field tests that the department conducted throughout the state. Although the department tried to create committees and teams that reflect the diversity of the California population, it did not have specific written procedures that it used to select members for each of the various groups involved in the exam development process. As a result, the review panels and teams that it established were not always representative of California's population.

- The department used its contract with Far West Laboratory for Educational Research and Development (Far West) to circumvent the State's civil service system. From May 1992 through May 1994, the department obtained the services of 28 employees who were not civil service employees but who worked at the department and were in some cases supervised by state employees. The department paid these employees through its contract with Far West. Because the department is circumventing the State's civil service laws by obtaining contract employees through its contract with Far West when it could be hiring civil service employees, individuals who have passed state civil service examinations do not have the opportunity to compete for the positions. In addition, from May 1992 through May 1994, the department paid administrative fees totaling more than \$318,000 to Far West and a personnel agency that paid the employees.
- The department is not exercising adequate control over its contract expenses for the CLAS exam. For example, it paid travel costs to Far West and the county offices of education (COE) for Sacramento and Los Angeles that exceeded the maximum reimbursement rates allowable by state rules, resulting in approximately \$14,000 in excess expenditures. In addition, the department did not require contractors to submit written progress reports to support the monthly invoices, incorrectly calculated retention amounts, and issued a duplicate payment for one invoice. As a result, the department cannot assure that all of its expenditures for the CLAS are appropriate and reasonable.

- The department appropriately used a competitive bidding process to award the CLAS contracts to three private companies and three COEs. The COEs in turn used subcontractors to perform a variety of services to the department. The COEs did not use a competitive bidding process to select their subcontractors; however, we could not identify specific provisions in the codes requiring COEs to use competitive bidding to award their contracts. Although the department awarded the contracts appropriately, for 13 contracts and 3 interagency agreements that we reviewed, the contractor performed work or provided services before approval of the contract. By failing to obtain approval before contract work began, the department exposed the State to potential monetary liability for work performed if the contract had not been approved.

Recommendations

If the program funding is restored, the department should develop and follow standard written procedures to ensure that the methods used to recruit and select new members to the advisory committees, development teams, and Community Review Panels are fair and consistent for all four content areas and that the committees and teams represent the diversity of the California population.

To ensure that it does not circumvent the State's civil service system, the department should take the following actions:

- Discontinue using a fiscal agent to obtain contract employees;
- Submit a budget change proposal (BCP) to the Department of Finance requesting civil service positions be funded with existing resources; and
- Recruit and hire civil service employees for the clerical, consultant, research associate, and production specialist positions.

To ensure that its expenditures for contracts are appropriate and reasonable, the department should take the following actions:

- Review invoices that it has already paid and recover all travel costs that exceeded the State's reimbursement rates;
- Review all future invoices before payment to ensure that payments for travel costs do not exceed the State's reimbursement rates;

- Require its contractors to submit written progress reports along with invoices for payment; and
- Strengthen its controls to ensure it withholds the correct amounts from progress payments and that duplicate payments are not made.

To ensure that the department does not expose the State to potential monetary liability for work performed if the contract or interagency agreement is not approved, the department should ensure that its contractors do not perform work or provide services before the department obtains approval for its contracts.

**Agency
Comments**

The department disagrees with some of the conclusions in our report. For example, the department disagrees with our findings related to selecting members of the development teams and balanced treatment review panels. However, the department did agree with our recommendation to formalize its standard procedures in writing. Additionally, the department disagrees that its use of the Far West contract circumvented the State's civil service system. Rather, the department contends that the contract supplements the department's civil service staff. Further, the department disagreed that it exposed the State to potential monetary liability when its contractors started work before the contracts were approved by the Department of General Services. Finally, the department agreed to review the travel costs for all contracts to ensure compliance with State rules and request written progress reports prior to contract payment

Introduction

In 1962, the State of California began administering statewide achievement tests to its public school students. From 1962 through 1972, it administered one or more standardized achievement tests to students in a variety of grade levels. These tests measured student achievements in reading, written expression, and mathematics and were expected to provide statewide results as well as information regarding students' performances to the local districts in which they were administered. However, California's educators expressed two major concerns with the standardized tests. First, the tests did not match the curriculum being taught in California's schools, and second, the educators felt that the time spent administering the tests was disproportionate to the amount of information gained. As a result, the California Assembly Education Advisory Committee recommended separating local and statewide testing programs. Local testing could then include a variety of tests to meet the schools' and districts' requirements for assessing individual students while the state testing program could focus on assessing the effectiveness of educational programs throughout the State.

To evaluate the effectiveness of educational programs in California's public schools, the Legislature amended the California Education Code to require the State Board of Education to develop a statewide test to determine statewide performance, school district performance, and school performance for students in grades 2, 3, 6, and 12. In addition, the code required the Department of Education (department) to administer either portions of the test, or the entire test to all students in each of these four grades. The department fully implemented the new assessment program, commonly referred to as the California Assessment Program (CAP), during fiscal year 1974-75. From 1974 through 1977, schools administered reading achievement tests to all students in second and third grades and tested the basic skills of reading, written expression, and mathematics for all students in grades 6 and 12.

From 1977 through 1986, the Legislature and the department made several changes to the CAP. For example, in 1977, the Assembly Advisory Committee on Statewide Testing recommended two significant changes to the CAP. First, the committee recommended that the department eliminate the test of second grade students, and second, it recommended that the department expand the test for third

grade students to include an evaluation of students' written language and mathematics skills. Chapter 498, Statutes of 1983, required the department to administer the CAP test to eighth and tenth grade students, in addition to the third, sixth, and twelfth grade students it already tests, and to expand the assessments to include tests in the areas of history-social science and science. The department added these content areas to the eighth grade tests in the spring of 1985 and 1986, respectively. In addition, Chapter 498 established the Golden State Examination program to identify and recognize academic achievement in certain courses by individual students. Finally, Chapter 498 required the department to administer the Golden State Examination, an end-of-course assessment, for which student participation is voluntary.

During the 1970s and the 1980s, the CAP tests administered by the department consisted primarily of multiple choice questions. However, during the mid 1980s, the department began to question the effectiveness of achievement tests that contained primarily multiple choice questions. Specifically, the department discovered that multiple choice tests had little value in testing reading and writing skills and did not require students to demonstrate that they had acquired the skills necessary to achieve success in higher education or in the world of work. As a result, the department began to reform the testing process by shifting the emphasis of achievement tests from primarily multiple choice questions to a more comprehensive assessment system. For example, from 1987 through 1991 the department added open-ended questions to the tests it administered to third, sixth, eighth, and twelfth grade students. These open-ended questions required students to construct their own solutions to questions covering a variety of subjects. Further, at an education summit held in December 1989, major groups driving California's education reform, including teachers, principals, superintendents, parents, students, and business leaders, recommended eliminating multiple choice tests in favor of performance-based assessments that would test students' ability to write, make oral presentations, and solve real world problems.

In response to the trend toward performance-based assessments, the former superintendent of public instruction established the California Assessment Advisory Policy Committee (committee), whose role was to recommend a new assessment system for California. The policy recommendations presented by the committee formed the basis for Chapter 760, Statutes of 1991 (SB 662), which required the department to develop and implement a new statewide assessment system commonly referred to as the California Learning Assessment System (CLAS). At the time SB 662 was enacted, existing law required the department to develop tests for assessing the effectiveness of

educational programs; however, SB 662 required the department to develop an assessment that reduced the reliance on multiple choice questions and increased the use of performance-based assessments. These performance-based assessments may include, but are not limited to, a student's demonstration of knowledge and skill by writing an essay response to a question, conducting an experiment, constructing a diagram or model, or orally explaining a solution to a problem. SB 662 also required the department to examine the feasibility of developing performance-based vocational certification exams. As a result, the department established the Career Technical Assessment Program, an end-of-program vocational education certification exam.

To support the development and implementation of the CLAS exam, SB 662 included an appropriation of approximately \$9.3 million to the department for fiscal year 1991-92. For fiscal years 1992-93 and 1993-94, the Legislature appropriated additional funding of approximately \$14.8 million and \$25.9 million, respectively. However, in the budget act for fiscal year 1994-95, the governor eliminated additional funding for the CLAS with the intention that the funds be set aside until legislation is enacted to reform the testing process. The 1994-95 budget bill also renamed the CLAS to the California Comprehensive Testing Program.

Scope and Methodology

The purpose of this audit was to review the department's process for developing items for the CLAS exam. In addition, we conducted this audit to determine whether the department complied with state laws and regulations when it awarded contracts for developing and implementing the CLAS exam. Finally, we conducted this audit to report on the nature and amount of funds expended for the CLAS exam from January 1992 through May 1994 and to determine the appropriateness of the expenditures.

To review the department's process for developing items for the CLAS exam, we reviewed the related laws, regulations, and departmental policies. In addition, to review how the department developed the exam for each of the four content areas—English-language arts, mathematics, history-social science, and science—we reviewed exam items and documented the department's process to develop these items. We did not evaluate the content of the exam.

We also reviewed the department's files to document the roles of various committees in developing items for the exam. Further, we interviewed department staff who participated in the process and requested a written statement from the department to confirm our

understanding of the information we obtained during these interviews. Finally, we contacted educational agencies of other states and obtained department-related information about assessment exams and compared the processes used in other states with those used in California.

During our review of the department's process to develop items for the CLAS exam, we did not review or evaluate the sampling methodology or statistical procedures the department used to select exams for scoring. We did not review these procedures because the acting superintendent of public instruction had appointed a panel of statistical experts to evaluate this aspect of scoring the exam. The department released the review on August 3, 1994. The panel reported that the department experienced problems related to test construction, sampling, scoring rules, reporting results, and statistical analysis. For example, since scoring is costly, the department elected to score only a sample of student responses from the CLAS exam. The department intended the sample to be sufficient to warrant reliable school reports. However, the panel found that the scores the department reported for 3 percent of the schools were based on samples of student responses that were much smaller than originally called for in the sampling plan. According to the department, these smaller samples resulted in erroneous school reports.

To determine whether the department complied with laws and policies when it awarded contracts for developing and implementing the CLAS exam, we reviewed the California Public Contract Code and the State Administrative Manual. We determined the department's compliance with these laws and policies by reviewing all 17 contracts and interagency agreements the department awarded for the CLAS exam. In addition, we interviewed personnel in three county offices of education—Sacramento, San Diego, and Los Angeles—as well as personnel from the Far West Laboratory for Educational Research and Development to which the department awarded contracts.

To determine the nature and amount of funds expended for developing and implementing the CLAS exam, we obtained a cost breakdown for the period January 1992 through May 1994. To determine the appropriateness of the expenditures included in the cost breakdown, we reviewed all nonsalary expenditures that exceeded \$15,000 and selected a statistical sample of expenditures that were less than \$15,000. Further, we performed an analysis of the salaries and wages the department charged to the CLAS to determine whether the charges

appeared reasonable. As part of our review of expenditures, we also interviewed personnel in the department's CLAS unit and the Fiscal and Administrative Services Branch.

During the course of our audit, we identified contracts and expenditures that related to the Golden State Examination program and the Career Technical Assessment Program. Although the funds for these programs are included in the budget for the CLAS, these two programs are separate from the CLAS exam and, therefore, were outside the scope of our audit.

Chapter 1 The Department of Education Used Similar Processes To Develop Its Learning Assessment Exams

Chapter Summary The Department of Education (department) used various groups to develop exams for the California Learning Assessment System (CLAS), including assessment advisory committees, development teams, and balanced treatment review panels. This development process was similar to the one the department used for earlier exams. The development teams, consisting primarily of teachers and other specialists, were responsible for generating and developing the exam items. The assessment advisory committees and balanced treatment review panels, which included teachers, administrators, and public members, provided input for the development teams' consideration. The development teams generated exams for each of the four content areas: English-language arts, mathematics, history-social science, and science. Although the department tried to create review panels and teams that reflect the diversity of the California population, it did not have specific written procedures for that purpose and, thus, cannot show that it was fair and consistent in its selection. Furthermore, the review panels and teams it established did not always represent California's population.

Background With the enactment of Chapter 760, Statutes of 1991 (SB 662), the Legislature directed the State Board of Education and the department to develop and implement a system to assess students. This system was to have, as its primary purpose, the improvement of instruction in California's public schools. In response to this legislative mandate, the department began to develop a more comprehensive, statewide assessment system with various components including the CLAS exam. Other components of the system include end-of-course assessments such as the Golden State Examination; and end-of-program assessments, such as the Career Technical Assessment Program that yield certificates of proficiency within a particular career area, or industry. Unlike the CLAS exam, these assessments are not mandatory. As stated in the Introduction, the governor eliminated additional funding for the CLAS exam in the budget act for fiscal year 1994-95, with the intention that the funds be set aside until legislation

is enacted to reform the testing process. However, the budget act did appropriate funding for the Golden State Examination and the Career Technical Assessment Program.

The further intent of SB 662 was for the CLAS exam to provide timely and relevant information that would allow educators to evaluate the performance of schools and school districts in providing effective educational programs. In addition, the exam was designed to measure what students in grades 4, 5, 8, and 10 know, how well they can think, and what they can accomplish. As required by SB 662, the department developed four exams to address the specific content areas of reading, written expression, mathematics, science, and history-social science. The department combined the content areas of reading and written expression into one exam, commonly referred to as the English-language arts exam.

Although the department developed four exams, it was not required to administer all the exams at each of the grade levels previously mentioned. As shown below, students in the fourth grade were required to take only the English-language arts and mathematics exams, whereas students in the fifth grade were required to take only the science and history-social science exams. Though students in grades 8 and 10 were required to take the entire exam, the department planned to allow students in grades 11 and 12 to take the exams again so they could demonstrate additional knowledge and skills they had acquired, thereby improving their scores.

Content Area	Grade			
	4	5	8	10
English-language arts	X		X	X
Mathematics	X		X	X
Science		X	X	X
History-social science		X	X	X

The English-language arts exam required students to write responses to specific reading passages, write an essay, and work with other students on certain activities as a group. The mathematics exam required students to solve mathematics problems and to construct their own responses to open-ended questions. These open-ended questions were designed to encourage creative responses and alternative paths to problem solving. The mathematics exam also included

enhanced-multiple choice questions which required that students demonstrate how well they can connect several concepts to arrive at the correct solution. Similarly, the history-social science exam included multiple choice questions and open-ended essay questions whereas the science exam included multiple choice and justified-multiple choice questions, as well as performance tasks that required students to perform short experiments and make scientific observations. Justified-multiple choice questions require students to briefly explain why they chose a particular answer.

In developing the CLAS exam, the department used the same process it had used to develop the California Assessment Program (CAP), the statewide exam used before the CLAS exam. For example, the department relied on assessment advisory committees composed of teachers and specialists to design and develop the tests included in the CAP. Specialists included university professors and administrators. In addition, the CAP tests covered the same four content areas the CLAS exam addressed. The overall purpose of the CAP, like the purpose of the CLAS, was to help schools and districts evaluate and modify their educational programs. However, the department intended that the CLAS exam reflect the movement towards using more performance-based assessments. As mentioned earlier, performance-based assessments may include, but are not limited to, a student's demonstration of knowledge and skill by writing an essay response to a question, conducting an experiment, constructing a diagram or model, or explaining a solution to a problem.

According to the department, it used various groups to develop the CLAS exam, including assessment advisory committees, development teams, and balanced treatment review panels. The department stated that the process each of the groups used to develop the exams was similar for each of the four content areas.

**Assessment
Advisory
Committees
Establish the
CLAS Exam
Blueprint**

The preliminary stage of the assessment development process began when the department appointed an Assessment Advisory Committee (advisory committee) for each of the four content areas. The advisory committees, consisting of teachers, administrators, public members, and other specialists for each content area, met to study the curriculum framework previously adopted by the State Board of Education. The curriculum framework describes the department's perspective and overall direction for developing curriculum and instructional programs. After reviewing the curriculum framework, the advisory committees for each content area developed a "blueprint" for

the assessment exam that outlined relevant issues including the major topics that the exam should cover, the chief methods of assessment, matters specific to each grade level, and the general design of the exam. For example, according to the department, after reviewing the curriculum framework, the advisory committee for the science content area recommended that the science exam include balanced coverage of the life, earth, physical, and coordinated science disciplines. In addition, the advisory committee recommended in November 1993 that the exam be composed of 40 percent performance tasks, 35 percent open-ended and justified-multiple choice questions, and 25 percent multiple choice questions. However, according to the staff coordinator of the science content area, the actual exam that was administered in the spring of 1994 was composed of approximately 70 percent performance tasks; 10 percent justified multiple-choice questions; and 20 percent multiple-choice questions.

**The Department
Appointed
Development
Teams To
Generate Items
for the Exam**

After the assessment advisory committees completed the blueprints, the department organized development teams, consisting primarily of teachers from throughout the state, to generate specific items to include on the exam. The department selected development team members from a pool of teachers nominated by their peers, professional organizations, or parent groups. In addition to teachers, other members of the development teams included staff from the department who coordinated the activities of the teams and, in some cases, specialists who provided technical expertise for a specific content area. For example, the 1994 development team charged with designing the history-social science exam for fifth grade students included 24 teachers from various school districts throughout the state and a representative from the department who served as the team coordinator. Similarly, the 1994 development team for the mathematics content area included 23 teachers, 6 administrators, and 2 retired teachers.

According to the department, it strived to create development teams that broadly reflected the ethnic, cultural, geographic, and gender balance of California's population. However, as Table 1 shows, the development teams for each of the four content areas did not always represent California's diverse population. For example, the percentage of Hispanics on the development teams ranged from 5 to 16 percent whereas 1990 census data indicates that 26 percent of the State's population is Hispanic. Similarly, Asian Americans were underrepresented; in fact, one of the development teams did not have any Asian American members.

Table 1

**Composition of Development Teams
by Ethnicity and Gender for Each Content Area**

	English- Language Arts		History- Social Science		Mathematics		Science		Statewide Percentages ^a
	Number	%	Number	%	Number	%	Number	%	
Ethnicity									
African American	5	13%	14	16%	2	7%	2	15%	7%
Asian American ^b	1	3	3	4	0	0	1	8	9
White	28	73	64	75	24	77	9	69	57
Hispanic	3	8	4	5	5	16	1	8	26
Native American ^c	1	3	0	0	0	0	0	0	1
Gender									
Female	33	87	54	64	24	77	10	77	50
Male	5	13	31	36	7	23	3	23	50
Totals	38		85		31		13		100%

^a Source: 1990 census data taken from the 1993 California Statistical Abstract, Department of Finance.

^b Statewide percentage also includes Pacific Islanders.

^c Statewide percentage also includes Eskimos, Aleuts and others.

During the development team meetings, members of the teams worked to prepare sample questions and performance tasks for the exams in their respective content areas. In addition, the development teams discussed the initial refinement or modification of questions they had developed. After several meetings, the development teams produced prototype exam items and evaluated their effectiveness using various field tests. According to the department, the primary purpose of field testing exam items was to provide information on how proposed test items function when administered under standardized classroom conditions.

This stage of the development process included two types of field tests: the small-scale classroom field test, and the statewide field test. According to the department, the small-scale classroom test was generally conducted by members of the development team, or by other teachers who administered one or more prototype exam items to students in their own classrooms. After they had completed the small-scale tests, the development team revised exam items as needed and compiled a pool of potentially viable exam items for the statewide field test.

To conduct the statewide field tests, the department sent letters to local district and county superintendents asking them to invite schools in their districts to participate in the field test. In some instances the department administered the field test at all the schools that volunteered to participate; however, if the department could not accommodate them all, it selected a group of schools to participate in the statewide field test. For example, according to the staff coordinator of the science content area, in field testing the science exam in spring 1994, the department selected the schools based on their geographic location, the size of the school district, and the ethnic composition of the school.

After the department administered the statewide field tests, members of the development team along with other professional staff, primarily teachers, scored the exams. The scoring teams then evaluated the exam items by determining how effective the items were in eliciting student responses. Further, according to the department, teachers who administered statewide field tests in their classrooms, as well as students who took the field test, were asked to provide feedback on the exam items in each of the content areas. All of the information collected as a result of the statewide field test was used by the department as the basis to select the exam items that progressed to the next stage in the development process.

**Balanced
Treatment
Review Panels
Screen Exam
Items for Bias
and Stereotyping**

After selections of exam items were made, the exam was reviewed by a separate group of individuals whose purpose was to ensure that the items on the exam did not contain any bias or stereotyping. This panel of reviewers, commonly referred to as the balanced treatment review panel (review panel), provided the development team with the last major piece of input in the process of developing exam items. The department appointed members to the review panel for each of the content areas. The membership of these review panels, as depicted in Table 2, ranged in size from 12 to 16. The review panels submitted comments and recommendations to the development teams based on their review of the exam items.

Although the department stated that it attempted to create review panels that broadly reflected the diversity of the State's ethnic, cultural, gender, and geographic population, our analysis indicates that the review panels did not always reflect California's diversity. For example, as shown in Table 2, the review panel for history-social science was composed of ten women and two men whereas the State's population is split evenly between women and men. In addition, the review panel for the mathematics exam included two Hispanics, representing 13 percent of the group, whereas the population in the state is composed of 26 percent Hispanics.

Table 2

**Composition of Balanced Treatment Review Panels
by Ethnicity and Gender for Each Content Area**

	English- Language Arts		History- Social Science		Mathematics		Science		Statewide Percentages ^a
	Number	%	Number	%	Number	%	Number	%	
Ethnicity									
African American	3	19%	3	25%	5	34%	5	38%	7%
Asian American ^b	4	25	1	8	2	13	3	23	9
White	6	37	3	25	6	40	1	8	57
Hispanic	3	19	3	25	2	13	3	23	26
Native American ^c	0	0	2	17	0	0	1	8	1
Gender									
Female	10	63	10	83	6	40	7	54	50
Male	6	37	2	17	9	60	6	46	50
Totals	16		12		15		13		100%

^a Source: 1990 census data taken from the 1993 California Statistical Abstract, Department of Finance.

^b Statewide percentage also includes Pacific Islanders.

^c Statewide percentage also includes Eskimos, Aleuts and others.

During their reviews, the review panels identified any texts or questions that reflected ethnic, racial, cultural, religious, gender, socioeconomic, or regional bias or stereotyping. For example, the review panel for the English-language arts exam recommended that a reading passage be deleted from the exam because, without the benefit of class discussion to set a context for the passage, it had a high potential for misinterpretation by students. One of the reasons the review panel did not believe the text was appropriate for the exam was because it reinforces negative stereotypes of women and African Americans.

The review panels also looked for any items that might be offensive or less familiar to any group of students because of their race, ethnicity, gender, religion, disability, or region in which they live. In addition, they attempted to ensure that the exam items accurately portrayed contributions made by the various groups in society. However, because the function of the review panels was advisory in nature, the input provided by the panel members were simply recommendations for consideration. According to the department, after reviewing these recommendations, the development teams decided to delete items from the exam, further refine certain items, or leave the exam items as they appeared.

**Standard
Procedures Not
Used To Select
Members of the
Development
Teams or the
Review Panels**

During our review of the department's process for recruiting and selecting members of development teams for each content area, we noted that the department had specific written procedures outlining the process it used to select members of the development team for the English-language arts content area. The process the department used to select the members involved soliciting nominations of qualified teachers, contacting all nominees, and inviting them to submit formal applications. After receiving the applications, the department interviewed candidates before selecting new members for the team. In contrast, we noted that the department did not have specific written procedures for selecting members of the development teams for the other three content areas.

Similarly, the department did not have specific written procedures for selecting members of the review panels. We also noted that the department did not convene a selection committee to recruit members for the review panels or make selection decisions; rather, an employee from the department's CLAS unit was solely responsible for coordinating the recruitment and selection of all panel members. This employee stated that she solicited nominations of potential appointees from a variety of sources, including the department's Bilingual Education Unit and Indian Education Unit; individuals who were

involved in the exam reviews for the California Assessment Program; and organizations specializing in equity issues, such as the UCLA Center for Research on Evaluation, Standards and Student Testing. The department employee also stated that she interviewed the nominees by phone to obtain additional information regarding their qualifications. According to the department, the final selection process for the review panels involved consultation and review by several people including CLAS staff.

Because the department did not use standard written procedures to recruit and select members for the development teams or the review panels, it could not demonstrate that the processes it used were fair and consistent. Furthermore, the teams and review panels it did establish were not representative of the diversity of California's population.

**Changes Proposed
To Improve
Procedures for
Developing
the Exam**

On May 12, 1994, the department submitted a proposal to the Board of Education to revise the process it used to develop items for the CLAS exam. In its proposal, the department stated that it would augment the advisory committees for each content area to include more members from the general public. Specifically, the department stated that at least one-fourth of the members of each advisory committee would be noneducators, including at least one member from each of the following groups: parents, the business community, local school boards, practicing professionals in the specific content areas, and community representatives. Similarly, the department proposed that it add public members to the review panels to increase the proportion of public members from 25 to 50 percent. The department also renamed the review panels as Community Review Panels (CRP).

The State Board of Education recently adopted the department's proposal. As a result, notwithstanding the governor's action to eliminate additional funding for the CLAS, the department has begun to implement the new procedures. For example, we noted that a newly revised CRP for the English-language arts content area convened its first meeting on July 5-7, 1994, and conducted a review of proposed texts for the English-language arts exam. The CRP consisted of 16 women and 12 men from across the State, with 14 of the panel members representing southern California, 9 from northern California, and 5 from the central part of the State. Further, this CRP included local school board members, business owners, parents, and a minister.

Although the department took steps to increase the number of public members for both the advisory committees and CRPs, it did not propose any changes to the development teams. As discussed earlier in this report, the CRPs provide input and make recommendations to the development teams regarding items included in the various exams. However, this input is advisory and may or may not affect the items included on the final version of the exams.

**Other States Have
Similarly Changed
Their Assessment
Exams**

We contacted the education departments for five different states that administer exams that include performance-based assessments. We interviewed administrators from each of the five states—Arizona, Connecticut, Delaware, Kentucky, and Maine—to gather information about how each state developed its exams. We used this information to compare the processes of those states with California’s process. During this review, we noted that four of the five states hired exam publishing companies to develop the assessment exams. In three of these four states, the education departments set the general framework the publishing company used to develop specific items for the assessment exams. In the remaining state, the state department purchased a pre-existing assessment exam from a publishing company. Similar to California’s process, Kentucky relies on content advisory committees and development teams to generate items for the assessment exams.

All five of the states perform some type of field test before exam items are included on the final version of the assessment exam. We also noted that three states use review committees to evaluate the exam items for racial, ethnic, gender, and cultural bias and stereotyping. Further, two of these states have recently expanded their recruitment for members on the bias review committees. According to representatives of their education departments, both states expanded the review committees in response to public criticism of the exams’ substantive content. These states expanded the committees to embrace a greater proportion of noneducators. Kentucky expanded its committee to include concerned citizens, PTA members, and clergy. Additionally, Arizona’s education department extended open invitations to both the speaker of the House and the president of the Senate of its state Legislature to participate in the process of selecting reading texts for its exam. According to that department, it also invited representatives from as many concerned interest groups as it could identify and took particular interest in inviting parents to be involved in the bias review process.

Conclusion The department used various groups to develop the CLAS exam, including advisory committees, development teams, and review panels. This development process was similar to the one followed by the department in developing earlier exams. The development teams primarily consisted of teachers and other specialists who were responsible for generating and developing the exam items. The assessment advisory committees and balanced treatment review panels, that included teachers, administrators, public members, and other specialists, provided input to the development teams for consideration. In addition, the development teams received input from teachers and students who participated in various field tests that the department conducted throughout the State. Although the department tried to create review panels and teams that reflect the diversity of the California population, it did not have specific written procedures that it used to select members for each of the various groups involved in the exam development process. Furthermore, the review panels and teams that it established did not always represent California's population.

Recommendation If the program funding is restored, the department should develop and follow standard, written procedures to ensure that the methods used to recruit and select new members to the advisory committees, development teams, and CRPs are fair and consistent for all four content areas and that the committees and teams represent the diversity of the California population.

Chapter 2 The Department of Education Used a Contractor To Circumvent the State's Civil Service System

Chapter Summary

The Department of Education (department) used its contract with Far West Laboratory for Educational Research and Development (Far West) to circumvent the State's civil service system. From May 1992 through May 1994, the department obtained the services of 28 employees who were not civil service employees but who worked at the department and were in some cases supervised by state employees. The department paid these employees through its contract with Far West. We identified three of these employees as clerical staff working in the department's California Learning Assessment System (CLAS) unit. Two of the three employees have been working for the department since at least May 1992. As evidence that the department knew the CLAS unit should have replaced these contract employees, in July 1993, the director of the department's Personnel Management Division sent a memorandum to the manager of the CLAS unit informing him that hiring clerical support staff outside the civil service process was inappropriate. She proposed that the manager of the CLAS unit prepare the paperwork necessary to recruit two civil service support staff on an expedited basis. The remaining employees that were not civil servants include employees the department classified as consultants, research associates, and production specialists. Although Far West paid the salaries of these employees, none of them were actually employed by Far West. Rather, Far West acted as a fiscal agent for the department by paying the salaries of these employees as instructed by the manager of the CLAS unit.

Because the department is circumventing the State's civil service laws by obtaining contract employees through its contract with Far West when it could be hiring civil service employees, individuals who have passed state civil service examinations do not have the opportunity to compete for the positions. In addition, from May 1992 through May 1994, the department paid administrative fees totaling more than \$318,000 to Far West and a personnel agency that paid the employees.

Background

Various educational entities from California and neighboring states, including the California State Board of Education, the Board of Regents of the University of California, and the Trustees of the

California State University, entered into a joint powers agreement and created Far West as a regional public agency. Far West's role is to conduct educational research and to develop educational improvements for the region's schools, colleges, and universities.

In April 1992, the department awarded a contract totaling approximately \$2.9 million to Far West. The contract term initially covered the period of May 1, 1992, through December 31, 1993; however, on December 30, 1993, the department amended the contract to extend the contract period to April 30, 1995. The department also increased the amount of the contract award from approximately \$2.9 million to approximately \$4.1 million. Since Far West is a public agency, the department did not obtain three competitive bids before awarding the contract; however, the Department of General Services reviewed and approved the contract. The work statement indicates that Far West will provide technical assistance to the department for the development and implementation of the CLAS exam.

The California Government Code, Section 19130, describes the conditions under which state agencies are allowed to contract for personal services instead of hiring civil service employees. For example, a state agency may contract for personal services when the services are not available within civil service, cannot be performed satisfactorily by civil service employees, or require skills of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system. The section also indicates that all persons who provide services under conditions that the State Personnel Board determines constitute an employment relationship shall be retained under an appropriate civil service appointment unless they are exempted. Finally, the Department of Finance and the Employment Development Department have issued a management memorandum stating that factors such as the supervision of, continuing relationship with, full-time work performed by, on-site work performed by, and monthly payments made to individuals indicate an employment relationship.

**Far West Used as
a Fiscal Agent
To Hire Contract
Employees**

During our review of the Far West contract and related invoices, we determined that the department circumvented the State's civil service system by using Far West as a fiscal agent to obtain staff for developing and implementing the State's assessment system. From May 1992 through May 1994, the department obtained the services of 28 employees who were not civil service employees but who generally worked at the department and were supervised by state employees. The department paid these employees, referred to as "contract employees,"

through Far West. Some of these contract employees performed duties that could normally be performed by civil service employees. For example, two contract employees, an accounting coordinator and an account clerk, perform routine tasks such as monitoring and recording expenditures, including payments to contractors such as Far West. Similarly, the office assistant, another contract employee, performs various clerical duties such as ordering materials and making travel reservations for staff in the CLAS unit.

During our review, we determined that both the accounting coordinator and the office assistant have been working for the department since at least May 1992. In July 1993, the director of the department's Personnel Management Division sent a memorandum to the manager of the CLAS unit informing him that hiring clerical support staff outside the civil service process was inappropriate. The personnel director proposed that the manager of the CLAS unit prepare the paperwork to recruit two civil service support staff on an expedited basis. Although the department did not obtain and fill a civil service position for the accounting coordinator, it did circulate a job announcement and scheduled interviews for two office assistant positions in August 1993. After interviews, the department hired one individual; however, it continued to pay Far West for the second office assistant. In January 1994, the department circulated a second job announcement for the office assistant position. According to the department, it interviewed six individuals and offered the position to two who subsequently declined the offers. As a result, as of May 31, 1994, the last pay period we reviewed, the accounting coordinator and the office assistant were still working at the department and were still being paid through the Far West contract.

In addition to clerical staff, the department also obtained the services of contract employees that it classified as consultants, research associates, and production specialists through the Far West contract. We obtained duty statements for some of these contract employees to determine if any of their tasks could be performed by civil service employees. During our review, we noted that research associates' responsibilities include providing assistance during the meetings of various committees and development teams, confirming travel arrangements and meeting room reservations, maintaining mailing lists, and preparing correspondence. Production specialists assist in the design, layout, production, and preparation of artwork for CLAS publications. As with the clerical contract employees, some of these duties could be performed by civil service employees.

In general, the contract employees work full-time for the department, receive monthly salary payments, and maintain continuing relationships with the department. The department's staff supervises some of the contract employees who work on-site at the department. For example, the manager and an administrator in the CLAS unit have directed the activities of an accounting coordinator, a research associate, and a consultant. During May 1994, the department had 17 contract employees working on the CLAS exam. Furthermore, as of May 1994, these 17 contract employees had worked for the department for an average of 13 months, ranging from 4 to 25 months. Moreover, 4 of the 17 contract employees have been working for the department since at least May 1992. Finally, of the 28 contract employees who worked for the department from May 1992 through May 1994, the department hired 3 into the CLAS unit as civil service employees in July and August 1993. One of these employees indicated that he had worked as a contractor with the department since April 1988.

Although Far West paid their salaries, the contract employees were not actually employed by Far West. Rather, Far West acted as a fiscal agent for the department by paying their salaries as instructed by the manager of the department's CLAS unit. For example, in May 1993, the manager of the CLAS unit sent a letter to Far West listing names and addresses for 14 of the contract employees and instructing Far West to pay them. The letter specified the amounts that Far West should pay each employee, with the payments to all 14 employees totaling approximately \$36,000. Far West submitted invoices to the department that included the payroll costs for the contract employees as well as an administrative fee that it charged the department to process the payments.

From May 1992 until May 1993, Far West directly paid the department's contract employees as instructed by the department. In May 1993, Far West began to use the services of a personnel agency to pay the contract employees. Under this arrangement, the department sent the payment information directly to a personnel agency based in San Francisco. The personnel agency paid the contract employees and submitted an invoice to Far West that included charges for both the payroll costs for the contract employees and an administrative fee of approximately 24 percent. Far West would then pay the personnel agency and submit an invoice to the department that included the amount of the invoice from the personnel agency, plus an additional administrative fee of 26.5 percent, as well as a 3 percent management fee. In December 1993, the administrative fee was reduced to 12.3 percent.

Because the department is circumventing the State's civil service laws by hiring contract employees through its contract with Far West instead of hiring civil service employees, individuals who have passed state civil service examinations do not have the opportunity to compete for the positions. In addition, the State is paying administrative fees on the payroll costs charged by both Far West and the personnel agency. From May 1992 through May 1994, the department paid approximately \$1.1 million to Far West for payroll costs, including administrative fees of approximately \$318,000. These administrative fees consisted of \$235,000 that Far West charged the department and \$83,000 that the personnel agency charged Far West.

Although Chapter 760, Statutes of 1991 (SB 662), appropriated funding for the CLAS beginning January 1992, the department did not attempt to obtain and fill civil service positions until September 1992. The department stated that, for both fiscal years 1993-94 and 1994-95, it submitted Budget Change Proposals (BCP) to the Department of Finance requesting additional civil service positions, which the Department of Finance denied. We reviewed the BCPs and discussed them with a representative from the Department of Finance to determine why it denied them. On the basis of our review, we determined that the Department of Finance denied the BCPs because the department had requested additional funds to pay for the civil service positions rather than redirecting the existing money that it was currently using to pay the contract employees through the Far West contract. Moreover, we noted that the department requested the additional funds for the positions even though the Department of Finance had previously notified all state agencies that it would reject requests for general fund monies that did not redirect existing funds from other areas.

Conclusion

The department is circumventing the civil service system by obtaining and paying employees through its contract with Far West. From May 1992 through May 1994, the department obtained the services of 28 employees who were not civil service employees but who worked at the department and were in some cases supervised by state employees. Furthermore, some of these employees performed duties that could be performed by civil service employees. In addition to denying prospective civil servants the opportunity to compete for those positions, the department paid Far West and a personnel agency administrative fees, in excess of the salaries, of approximately \$318,000.

Recommendation To ensure that it does not circumvent the State's civil service system, the department should take the following actions:

- Discontinue using a fiscal agent to obtain contract employees;
- Submit a BCP to the Department of Finance requesting civil service positions be funded with existing resources; and
- Recruit and hire civil service employees for the clerical, consultant, research associate, and production specialist positions.

Chapter 3 The Department of Education Is Not Exercising Adequate Control Over Contract Expenditures for the California Learning Assessment System

Chapter Summary

The Department of Education (department) awarded contracts to an educational research agency and three county offices of education (COE) to assist it in developing and implementing the California Learning Assessment System (CLAS) exam. We found that the department is not exercising adequate control over these contract expenditures. For example, the department paid these contractors' travel costs that exceeded the maximum reimbursement rates allowable by state rules. In addition, the department did not ensure that its contractors submitted written progress reports to support the monthly invoices, did not correctly calculate retention amounts, and issued a duplicate payment. As a result, the department paid travel costs that exceeded the State's rates by approximately \$14,000. The department also cannot assure that all of its contract expenditures for the CLAS exam are appropriate and reasonable.

Contractors' Travel Costs Not Adequately Monitored

As discussed in Chapter 2, in April 1992, the department awarded a \$2.9 million contract to the Far West Laboratory for Educational Research and Development (Far West). The terms of this contract stated that Far West would assist the department in the research and development work necessary for implementing the new student assessment system. In December 1993, the department amended the contract to extend the period to April 1995 and to increase the amount of the contract award to \$4.1 million. One of Far West's services, according to its contract with the department, was to convene advisory groups and coordinate meetings for them. This involved making conference and hotel arrangements.

To obtain further assistance in developing the new assessment system, the department also awarded contracts to the COEs in Sacramento and Los Angeles. These COEs were responsible for paying the costs for meetings of various development teams and advisory committees. Further, each of the contracts the department awarded to Far West and the COEs stated that all travel costs would be reimbursed at rates established for the department and would be computed in accordance

with applicable regulations established by the Department of Personnel Administration. These regulations can be found in the California Code of Regulations, Title 2, Section 559.619, which states that the maximum reimbursement rates for employees traveling on business are \$5.50 for breakfast, \$9.50 for lunch, \$17 for dinner, \$5 for incidentals, and \$79 plus tax for lodging.

We reviewed 25 invoices supporting travel costs that Far West and the two COEs included in the monthly billings they submitted to the department. We found that Far West and the COEs paid rates for meals that exceeded the State's reimbursement rate and, in turn, charged these costs to the department. For example, Far West billed the department for a Technical Advisory Committee meeting that was held in Monterey, California, in June 1994. As part of the invoice for this meeting, Far West billed the department \$3,732 for meals the hotel provided to the committee members. We calculated the costs per person as \$12.50 for breakfast, \$24 for lunch, and \$27.50 for dinner. For each day, the total cost per person was \$64, which exceeds the State's reimbursement rates by \$32. In total, the charges for meals exceeded the State's reimbursement rates by \$1,715.

Similarly, in June 1993, the Sacramento COE coordinated a meeting of math scorers and billed the department for meals at rates above the State's reimbursement limits. The bill to the department for the meals at this meeting was approximately \$3,900. We reviewed the invoices and calculated the average costs per person as \$8 for breakfast, \$16.50 for lunch, and \$21 for dinner. For each day, the total cost per person was \$45.50, which exceeds the State's reimbursement rates by \$13.50. In total, the charges for meals exceeded the State's reimbursement rates by \$1,060.

Although Far West sometimes submitted documentation supporting the charges on its invoices, the department did not adequately review the documentation before approving payments to Far West. Furthermore, the department did not require the COEs to submit supporting documents for the travel charges on their invoices, so it could not determine if the reimbursement rates the COEs charged were within the Department of Personnel Administration's limits. Because it did not adequately monitor travel costs that Far West and the COEs billed the department, for 24 invoices we reviewed, the department paid approximately \$14,000 more than the amount authorized by state rules. The department has not yet paid the remaining invoice that includes costs that exceed the State's reimbursement rates by \$1,960.

**Contract
Expenditures for
the CLAS Not
Adequately
Monitored**

The Legislature initially appropriated funds to the department for fiscal year 1991-92 so it could develop and implement the CLAS. The Legislature appropriated additional funding for fiscal years 1992-93 and 1993-94 so the department could continue its efforts to develop the assessment system. In Appendix A, we summarize the amounts the Legislature appropriated for the CLAS and the types of expenditures the department made from January 1992 through May 1994.

To determine the appropriateness of the department's expenditures, we reviewed the State Administrative Manual, which provides guidance to state agencies for reviewing and preparing invoices for payment. Section 1258 of the manual states that when agencies make progress payments for a contract, the payments should be based upon written progress reports that the contractor submits along with the invoices. Accordingly, the department required the COEs to submit a written summary of progress with each invoice. According to the contracts, the progress reports would describe the activities performed during the period covered by the corresponding invoice. Section 1258 also requires that when progress payments are made, the state agency must retain an amount equal to at least 10 percent of the invoice until completion of the contract. In addition, Section 8422.1 states that agencies must verify that a payment was not previously made before it pays an invoice.

We selected a sample of 148 payments that the department made from January 1992 through May 1994. Based on our review, we noted that the department is not exercising adequate control over its contract expenditures for the CLAS exam. As a result, the department cannot assure that all of its expenditures for the CLAS exam are appropriate and reasonable.

For example, we determined that although the department had a written requirement that the COEs submit written progress reports with each invoice, it did not ensure that it received those reports before paying the contractors. According to the department, it continuously monitors its contractors through progress reports, daily contact with its contractors, and reviews of the contract work products. However, we saw no evidence that the monthly invoices were supported by written progress reports.

In addition to not ensuring that it received written progress reports, the department incorrectly calculated the 10 percent retention amount for two of the progress payments it made to Far West. Specifically, for the April and May 1993 invoices, the department retained approximately \$2,440, which represented only 1 percent of the progress payments,

rather than approximately \$24,400, which would have been 10 percent of the progress payments. Additionally, we noted that the department made two payments to Far West for the same invoice. In March 1993, the department paid an invoice submitted by Far West that totaled approximately \$129,000, and in October 1993, it issued another payment to Far West for the same invoice. The department did not discover these errors until April 1994, when it made its final payment to Far West for the contract.

Finally, the department did not withhold the correct amount from its progress payments to the Sacramento COE. After it made a progress payment in June 1994, the department retained \$54,000, which represented only 1 percent of the progress payments rather than \$504,000, or 10 percent of the progress payments.

Conclusion The department is not exercising adequate control over its contract expenses for the CLAS exam. For example, it paid travel costs to Far West and two COEs that exceeded the maximum reimbursement rates allowable by state rules, resulting in approximately \$14,000 in excess expenditures. In addition, the department did not ensure that its contractors submitted written progress reports to support the monthly invoices, incorrectly calculated the retention amount for two invoices, and issued duplicate payments for one invoice. As a result, the department cannot assure that all of its contract expenditures for the CLAS exam are appropriate and reasonable.

Recommendation To ensure that its expenditures for contracts are appropriate and reasonable, the department should take the following actions:

- Review invoices that it has already paid and recover all travel costs that exceeded the state reimbursement rates;
- Review all future invoices before payment to ensure that payments for travel costs do not exceed the State's reimbursement rates;
- Require its contractors to submit written progress reports along with invoices for payment; and
- Strengthen its controls to ensure that it withholds the correct amounts from progress payments and that duplicate payments are not made.

Chapter 4 The Department of Education Followed a Competitive Bidding Process for Awarding Contracts

Chapter Summary

The Department of Education (department) appropriately awarded the California Learning Assessment System (CLAS) contracts to three private companies and three county offices of education (COE) using a competitive bidding process. The three COEs in turn used subcontractors for a variety of services to the department. The COEs did not use a competitive bidding process to select their subcontractors; however, we could not identify specific provisions in the codes requiring COEs to use competitive bidding to award their contracts. Although the department awarded the contracts appropriately, for 13 contracts and 3 interagency agreements that we reviewed, the contractor performed work or provided services before approval of the contract. By failing to obtain approval before contract work began, the department exposed the State to potential monetary liability for work performed if the contract had not been approved.

Background

To support the department's efforts to develop and implement the CLAS, the Legislature and the governor appropriated approximately \$9.3 million to the department for fiscal year 1991-92. Of the \$9.3 million appropriated, Chapter 760, Statutes of 1991 (SB 662) required the department to apportion \$5 million to school districts or COEs. The department could retain the remaining \$4.3 million for its own use. By earmarking the \$5 million as local assistance funds, SB 662 required the department to request local educational agencies (LEAs) to assist in the process of developing and implementing the CLAS exam. LEAs include the governing body of any school district, state special school, or COE.

As the CLAS program expanded, the budget acts for fiscal years 1992-93 and 1993-94 included approximately \$15.8 million and \$27.5 million, respectively, for further development and implementation of the CLAS exam. Similar to the provisions in SB 662, the budget acts for these years identified a portion of the CLAS budget as local assistance funds, requiring the department to disburse approximately \$10.8 million to the LEAs for fiscal year 1992-93 and approximately \$22.5 million for fiscal year 1993-94. Although it appears that the department retained \$5 million for each of the fiscal

years, various budgetary adjustments during fiscal years 1992-93 and 1993-94 reduced the amount available to \$4.1 million and \$3.4 million, respectively.

During fiscal year 1991-92, the department awarded contracts totaling approximately \$5.4 million to three private companies and one educational research laboratory. As previously discussed, because of the funding structure established for the CLAS, in the second and third years of the program, the department requested the COEs to provide the additional assistance that it needed to expand the CLAS to the levels required by SB 662. As a result, the department awarded additional contracts totaling \$29 million to three COEs: Sacramento, Los Angeles, and San Diego. In addition to these large contracts, the department awarded seven smaller contracts to COEs and school districts, and three interagency agreements to various campuses within the California State University system. Table 3 summarizes the terms and funding for the 17 contracts and interagency agreements the department awarded during fiscal years 1991-92 through 1993-94. In addition, Appendix B presents descriptions of the types of services each contractor provided to the department.

Table 3

**Summary of California Learning Assessment System
Contracts and Interagency Agreements
Terms and Funding**

Contractor	Contract Term	Funding Fiscal Year			Total
		1991-92	1992-93	1993-94	
The Psychological Corporation	03-17-92 to 12-31-93	\$ 678,200			\$ 678,200
CTB MacMillan/ McGraw-Hill	06-18-92 to 12-31-93	300,000	\$ 304,300		604,300
Educational Testing Service	03-17-92 to 06-30-94	1,230,000			1,230,000
Far West Laboratory for Educational Research ^a	05-01-92 to 04-30-95	950,000	1,400,000	\$ 877,096	3,227,096
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Sacramento COE	02-01-92 to 12-31-93	440,000			440,000
Sacramento COE ^{b,c}	01-01-93 to 06-30-95		5,386,930	14,007,158	19,394,088
Santa Barbara COE	06-01-92 to 12-31-94	220,000			220,000
Riverside COE	06-01-92 to 12-31-92	220,000			220,000
San Diego COE	06-01-92 to 12-31-93	219,101			219,101
San Diego COE ^{b,d}	01-01-93 to 06-30-95		206,043	989,975	1,196,018
Los Angeles COE ^{b,d}	01-01-93 to 06-30-95		2,581,620	5,834,603	8,416,223
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California State University, Sacramento	01-27-93 to 08-19-94		84,196	38,670	122,866
California State University, Fresno	11-24-93 to 08-23-94			23,533	23,533
California State University, Bakersfield	09-01-92 to 06-30-93		51,570		51,570
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Albany Unified School District	09-07-93 to 06-17-94			40,299	40,299
Simi Valley Unified School District	09-01-93 to 06-30-94			75,630	75,630
Huntington Beach Union High School District	02-01-93 to 06-30-94		46,271	20,226	66,497
Total		\$ 4,257,301	\$ 10,060,930	\$ 21,907,190	\$ 36,225,421

^aThis does not include \$900,000 encumbered for fiscal year 1994-95.

^bThe contract term incorporates an amendment not yet approved.

^cThe funding for fiscal year 1993-94 includes a contract amendment for approximately \$13.4 million that is not yet approved.

^dThe funding for fiscal year 1993-94 is for a contract amendment that is not yet approved.

**State Contracting
Procedures Used
To Award
Contracts To
Private Entities
and COEs**

Using funds appropriated for fiscal year 1991-92, the department awarded three of its CLAS contracts to private companies: The Psychological Corporation, CTB MacMillan/McGraw-Hill, and the Educational Testing Service. To award these three contracts, the department appropriately followed competitive bidding procedures as required by the Public Contract Code and the State Administrative Manual. For example, the department appropriately advertised the contracts, received proposals from interested parties, evaluated the proposals for technical and subject matter content, and awarded the contracts to the lowest responsible bidders. Furthermore, to introduce an element of competition and to encourage widespread participation by the COEs in fiscal years 1992-93 and 1993-94, the department used a process to award contracts to COEs that parallels state procedures for awarding contracts.

In October 1992, the department notified all county superintendents in California that it was soliciting interest from the COEs to assist the department in developing and implementing the CLAS exam. The department required the COEs to submit proposals demonstrating how the counties would assist it in several areas including designing the exam, printing and distributing exam materials, directing field tests, scoring exams, and analyzing and reporting exam results. Although it sent a letter to all the counties, the department received proposals from only three COEs: Los Angeles, Sacramento, and San Diego. The department evaluated each proposal for its technical and programmatic content and awarded contracts to all three COEs.

**COEs Used the
Same Companies As
Subcontractors That
the Department
Used As Primary
Contractors**

In the proposals they submitted to the department, each of the three COEs stated that it intended to use private companies as subcontractors to perform a variety of services for the department. Table 4 provides a list of the private companies the COEs selected as subcontractors and the amounts awarded to each of the subcontractors.

Table 4**Summary of Amounts Awarded
to Subcontractors Through COEs**

Contractor	Contract Award		Percentage of Total
Los Angeles COE^a	\$ 8,416,223		
Amount remaining with COE		\$ 1,507,833	18%
The Psychological Corporation	6,485,937		
Riverside Publishing Company	54,453		
Miscellaneous subcontractors	368,000		
Total Amount to Subcontractors		6,908,390	82
Sacramento COE^b	19,394,088		
Amount remaining with COE		6,802,136	35
CTB MacMillan/McGraw-Hill	9,405,336		
Far West Laboratory for Educational Research	1,000,000		
Miscellaneous subcontractors	2,186,616		
Total Amount to Subcontractors		12,591,952	65
San Diego COE^c	1,196,018		
Amount remaining with COE		657,816	55
The Psychological Corporation	80,000		
Riverside Publishing Company	69,831		
Miscellaneous subcontractors	388,371		
Total Amount to Subcontractors		538,202	45
COE Contract Total	\$29,006,329		
Total Amount Remaining With COEs		\$ 8,967,785	31%
Total Amount to Subcontractors		\$20,038,544	69%

^a This contract award includes a \$5.8 million amendment not yet approved.

^b This contract award includes a \$13.4 million amendment not yet approved.

^c This contract award includes a \$1 million amendment not yet approved.

During our review of the contracts the department awarded to the three COEs, we noted that they elected to use two of the three private companies the department had contracted with during the first year of the CLAS. The Psychological Corporation served as a subcontractor for both the Los Angeles and San Diego COEs, and CTB MacMillan/McGraw-Hill served as a subcontractor for the Sacramento COE. By serving as both a prime and subcontractor on the CLAS project, The Psychological Corporation was awarded a total of \$7.2 million, and CTB MacMillan/McGraw-Hill was awarded a total of \$10 million. In addition, we noted that the Far West Laboratory for Educational Research (Far West) is included as a subcontractor in the proposed amendment for the department's contract with the Sacramento COE. If this amendment is approved, Far West will receive an additional \$1 million bringing its total awards as both a prime and subcontractor to \$5.1 million.

According to the three COEs, they did not use a competitive bidding process to select any of the subcontractors. Instead, the COEs selected the subcontractors based on their knowledge of each subcontractor's ability to participate in a project the size of CLAS, and the subcontractor's previous record of service.

To determine whether the COEs should have used a competitive bid process to select its subcontractors, we reviewed the Public Contract Code and the California Education Code. However, we could not identify specific provisions in these codes requiring COEs to use a competitive bidding process to award their contracts. As a result, we requested the COEs to provide us with their own rules and regulations for awarding contracts. In general, the information provided by the COEs indicates that they classified these subcontracts as consulting services contracts and that their procedures do not require them to award consulting services contracts through a competitive process.

**Contractors
Allowed To Begin
Contract Activities
Before Contract
Approval**

The Public Contract Code, Section 10295, states that all contracts entered into by state agencies are void unless and until they are approved by the Department of General Services (DGS). In addition, the State Administrative Manual, Section 1215, requires DGS approval for all contracts exceeding \$15,000 and all interagency agreements that exceed \$35,000.

During our review of the 14 contracts and 3 interagency agreements that the department awarded for the CLAS, we found that in 15 cases the contractor performed work or provided services before the DGS approved the contract or interagency agreement. One interagency

agreement was exempt from DGS approval; however, the contractor provided services prior to the date the department approved the agreement. The remaining contract was originally awarded to the Sacramento COE to administer the final California Assessment Program (CAP) exam. Later, the department amended the contract to include services related to the CLAS exam. We could not determine whether the contractor provided services before approval, because the invoice the Sacramento COE submitted to the department did not separately identify the costs for both the CAP and CLAS projects.

In one case, we noted that the contractor began work 14 months before the contract was approved by DGS. According to this contractor, it began work prior to DGS' approval "for the benefit of the State and with the state program management's blessing." After DGS approved this contract, the department paid the contractor approximately \$400,000 for the services that it had provided during the 14 months before approval of the contract. Similarly, another contractor began work 6 months before DGS approved its contract with the department. This contractor indicated that it had expended \$730,000 of its own funds to work on the CLAS project at the request of the department.

Although these contractors and others performed work or provided services prior to approval of their respective contracts, the department did not make any payments to the contractors until after the contracts were approved. By failing to obtain approval before work began, the department exposed the State to potential monetary liability for work performed if the contract or the interagency agreement had not been approved.

Conclusion Using funds appropriated for fiscal year 1991-92, the department awarded three of its CLAS contracts to private companies. In awarding these contracts, the department appropriately followed state contracting procedures. Additionally, it used a process to award contracts to COEs that parallels state procedures for awarding contracts. The COEs, in turn, used subcontractors for a variety of services to the department but did not use a competitive process to select its subcontractors; however, we could not identify specific provisions requiring that the COEs use competitive bidding in these cases. Although the department awarded the contracts appropriately, we found that, for 13 contracts and 3 interagency agreements, the contractor performed work or provided services before approval of the contract. By failing to obtain approval before contract work began, the department exposed the State to potential monetary liability for work performed if the contract had not been approved.

Recommendation To ensure that the department does not expose the State to potential monetary liability for work performed if the contract or interagency agreement is not approved, the department should ensure that its contractors do not perform work or provide services before the department obtains the approval of the DGS for its contracts.

We conducted this review under the authority vested in the state auditor by Section 8543 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope of this report.

Respectfully submitted,



KURT R. SJOBERG
State Auditor

Date: August 22, 1994

Staff: Elaine M. Howle, Audit Principal
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Appendix A

Budget and Expenditures for California Learning Assessment System As of May 31, 1994 (In Thousands)

	Fiscal Year			Total	Expenditures As a Percentage of Total
	1991-92	1992-93	1993-94		
BUDGET	\$9,250	\$14,847	\$25,866	\$49,963	
Less California Technical Assessment Program	0	1,356	1,461	2,817	
Total	\$9,250	\$13,491	\$24,405	\$47,146	
EXPENDITURES					
Contract Expenditures					
California Learning Assessment System	\$4,328	\$ 6,768	\$ 642	\$11,738	51.3%
Golden State Exam	1,864	2,240	0	4,104	17.9
California Assessment Program	1,686	0	0	1,686	7.4
Total Contract Expenditures	7,878	9,008	642	17,528	76.6
Departmental Expenditures*					
Salaries, wages, benefits	550	887	988	2,425	10.6
Travel	171	354	372	897	4.0
Equipment	9	156	0	165	.7
Indirect costs	250	364	273	887	3.9
Facilities operations	57	96	86	239	1.0
All other expenditures	201	387	152	740	3.2
Total Departmental Expenditures	1,238	2,244	1,871	5,353	23.4
TOTAL EXPENDITURES	\$9,116	\$11,252	\$ 2,513	\$22,881	100.0%

Source: Department of Education, Accounting Office

Note: Expenditures for 1993-94 do not reflect the costs associated with contracts the department is currently in the process of amending. The expenditures related to these contracts will occur during fiscal year 1994-95.

* We were not able to isolate the Golden State Exam costs in the departmental expenditures; however, departmental staff estimated that they spent approximately 10 to 20 percent of their time working on the Golden State Exam.

Appendix B

Schedule of Contractors and Description of Services To Be Provided to the Department of Education

CONTRACTOR	DESCRIPTION OF SERVICES
THE PSYCHOLOGICAL CORPORATION	<ul style="list-style-type: none"> ◆ Prepare, print, distribute, collect, and analyze the spring 1992 pilot tests and conduct a bias review and, refine the forms and scoring criteria for the spring 1993 field tests. ◆ Propose ways to ensure student equity and access by studying the effects of open-ended testing techniques, the causes of differences across student groups, and alternative testing methods. ◆ Propose work plans and models to assist the school districts in the development of their own exams, evaluate exams available for purchase, and propose plans for examining students in their first language.
CTB MACMILLAN/ MCGRAW-HILL	<ul style="list-style-type: none"> ◆ Research formats and questions for use on the California Learning Assessment System (CLAS) exam and research the uses of matrix sampling and scoring efficiencies. ◆ Assist in developing exams for the grades that SB 662 did not target for the CLAS exam and assist the County Office of Education (COE) to evaluate exams available for purchase.
EDUCATIONAL TESTING SERVICE	<ul style="list-style-type: none"> ◆ Identify, analyze, and develop prototypes and scoring criteria for the CLAS exam, and field test, score, and analyze the prototypes. ◆ Perform bias reviews of the material to be used in the CLAS exams. ◆ Construct procedures to ensure the reliability and the comparability of the exam scores. ◆ Propose plans for examining students in their first language.
FAR WEST LABORATORY FOR EDUCATIONAL RESEARCH	<ul style="list-style-type: none"> ◆ Schedule, coordinate, oversee, and evaluate the private contractors. ◆ Develop student performance standards. ◆ Design a system for the use of standards to improve achievement in schools, districts, and individual student performance. ◆ Conduct research in designing, developing and implementing the CLAS exam. ◆ Convene and coordinate advisory committees and development teams in each subject area to: <ul style="list-style-type: none"> ➤ Study key curriculum documents; ➤ Develop working guidelines for assessment strategies and techniques; ➤ Develop and review prototype assessment tasks; ➤ Conduct small-scale tryouts in classrooms; ➤ Conduct, score, analyze, and revise field tests; ➤ Conduct balance treatment reviews; and ➤ Conduct staff development related to the exam.

LOS ANGELES COUNTY OFFICE OF EDUCATION	<ul style="list-style-type: none"> ◆ Provide the following services during the spring 1993 statewide exam and field tests in English/language arts and mathematics: <ul style="list-style-type: none"> ➤ Write, design, and prepare the exam materials; ➤ Design, coordinate, and ensure quality control of the exam; ➤ Print and distribute the exam and administrative materials; ➤ Score both the machine and hand-scoreable portions of the exams; and ➤ Analyze and report exam results.
SACRAMENTO COUNTY OFFICE OF EDUCATION	<ul style="list-style-type: none"> ◆ Provide the following services during the spring 1993 statewide assessment exam and field test assessments in English/language arts and mathematics: <ul style="list-style-type: none"> ➤ Design, coordinate, and ensure quality control of the exam; ➤ Score the hand-scorable portions of the exams; ➤ Analyze and produce exam results; and ➤ Report the exam results.
SAN DIEGO COUNTY OFFICE OF EDUCATION	<ul style="list-style-type: none"> ◆ Administer the spring 1993 statewide assessment and field test assessments in history/social science and science.
RIVERSIDE COUNTY OFFICE OF EDUCATION	<ul style="list-style-type: none"> ◆ Provide the following services for scoring of the open-ended portions of the spring and summer 1992 field tests in the area of mathematics: <ul style="list-style-type: none"> ➤ Recruit and train scorers; ➤ Arrange and provide all facilities and resources for scorer training; and ➤ Pay honoraria, travel, and lodging for participants. ◆ Develop standard procedures for scorer training, scoring, and the storage and return of testing materials. ◆ Conduct staff development related to the CLAS exam.
SACRAMENTO COUNTY OFFICE OF EDUCATION	<ul style="list-style-type: none"> ◆ Provide the following services for the statewide grade 8 writing assessment in May 1992: <ul style="list-style-type: none"> ➤ Update, print, distribute, and collect test materials; and ➤ Score tests and analyze and report the data to the state and school districts. ◆ Provide the following services for the scoring portion of the spring and summer 1992 field tests in English/language arts: <ul style="list-style-type: none"> ➤ Recruit and train scorers; ➤ Arrange and provide all facilities and resources for scorer training; and ➤ Pay honoraria, travel, and lodging for participants. ◆ Develop standard procedures for scorer training, scoring and debriefing scorers, as well as for scoring and returning testing materials. ◆ Conduct staff development related to the CLAS exam.
SAN DIEGO COUNTY OFFICE OF EDUCATION	<ul style="list-style-type: none"> ◆ Provide the following services for the spring and summer 1992 field tests in the area of history/social science: <ul style="list-style-type: none"> ➤ Recruit and train scorers; ➤ Arrange and provide all facilities and resources for scorer training; and ➤ Pay honoraria, travel, and lodging for participants. ◆ Develop standard procedures for scorer training and scoring, as well as for storing and returning testing materials.

SANTA BARBARA COUNTY OFFICE OF EDUCATION	<ul style="list-style-type: none"> ◆ Provide the following services for the spring and summer 1992 field tests in science: <ul style="list-style-type: none"> ➤ Recruit and train scorers; ➤ Arrange and provide all facilities and resources for scorer training; and ➤ Pay honoraria, travel, and lodging for participants. ◆ Develop standard procedures for scorer training, scoring, as well as storing and returning of testing materials.
ALBANY UNIFIED SCHOOL DISTRICT	<ul style="list-style-type: none"> ◆ Provide a visiting educator to perform the following services: <ul style="list-style-type: none"> ➤ Participate in all aspects for developing, piloting, field testing, scoring, and preparing the grade 4 CLAS exam in mathematics; and ➤ Assist in preparing teachers to administer and score the grade 4 CLAS exam in mathematics.
HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT	<ul style="list-style-type: none"> ◆ Provide a visiting educator to perform the following services: <ul style="list-style-type: none"> ➤ Develop, implement, and annually revise the CLAS exam for grade 10 in the area of history/social science; ➤ Assist California history/social science teachers to develop skills for evaluating student work based on performance standards; and ➤ Develop and implement methods of communication with all interested parties regarding the grade 10 CLAS exam in history/social science.
SIMI VALLEY UNIFIED SCHOOL DISTRICT	<ul style="list-style-type: none"> ◆ Provide a visiting educator to perform the following services: <ul style="list-style-type: none"> ➤ Provide leadership for developing, piloting, field testing, scoring and final preparation of the CLAS exam in mathematics during the two-year development process; and ➤ Assist in preparing teachers to administer and score the CLAS exam in mathematics.
CALIFORNIA STATE UNIVERSITY, BAKERSFIELD	<ul style="list-style-type: none"> ◆ Provide a visiting educator to perform the following services: <ul style="list-style-type: none"> ➤ Coordinate and support the development of reading and writing prompts for current and future CLAS exams by working with various committees and teams; ➤ Coordinate the work of contractors and the COEs and establish a means of communicating information regarding the CLAS exam to all interested parties; and ➤ Assist in establishing a staff development plan for the CLAS exam in English/language arts.
CALIFORNIA STATE UNIVERSITY, FRESNO	<ul style="list-style-type: none"> ◆ Provide a visiting educator to perform the following services: <ul style="list-style-type: none"> ➤ Assist in coordinating bias reviews and creating assessment materials in languages other than English and for student's with special needs; ➤ Assist in planning and developing assessments in languages other than English and for student's with special needs; and ➤ Assist in on-going efforts to inform California educators and the public regarding the CLAS exam.

CALIFORNIA STATE UNIVERSITY, SACRAMENTO	<ul style="list-style-type: none">◆ Provide a visiting educator to perform the following services:<ul style="list-style-type: none">➤ Serve as liaison with the contractors responsible for data analysis and reporting of test results;➤ Plan and coordinate the statistical analyses of the annual results of pilot testing, field testing, and statewide testing at all required grade levels; and➤ Design and maintain quality control over test administration and the scoring process.
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CALIFORNIA DEPARTMENT OF EDUCATION

721 Capitol Mall: P.O. Box 944272

Sacramento, CA 94244-2720

August 17, 1994

Kurt R. Sjoberg
State Auditor
660 J Street, Suite 300
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Dear Mr. Sjoberg:

This is the California Department of Education's (CDE's) response to your draft audit report titled "A Review of the Department of Education's Cost and Development of the California Learning Assessment System." Thank you for the opportunity to review and comment on your draft report.

The discussion in the first chapter of your report provides a useful summary of the evolution of the California Learning Assessment System (CLAS) and the demanding nature of the process for developing each examination. It is important that Californians understand that each examination is carefully designed, developed, and refined by advisory committees, development teams and review panels of educators, community members, parents and specialists.

There are several key factors that must be kept in mind as the findings and conclusions of your audit are reviewed:

- (1) Student assessment in the California public school system is a huge undertaking. CLAS tests are administered to more than one million students statewide in English language arts, mathematics, science, and history-social science.
- (2) In establishing CLAS, the Legislature and the Governor called on the CDE to develop and implement a new form of educational assessment based on absolute standards of performance, measured by real student work, resulting in individual, school, district, and statewide scores.
- (3) Timelines for the development and implementation of the new assessment system were extremely short. California had gone 16 months without a statewide assessment program when Senate Bill 662 (SB 662) passed in 1991 calling for a five-year development plan and setting annual benchmarks for accomplishments. The need for the CDE to build a new

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assessment system from scratch required prompt and effective action.

- (4) Year-to-year funding and the future of CLAS have always been uncertain. SB 662 carried a sunset clause that specifically required legislative reauthorization or the program would terminate. The Legislature has yet to act on legislation to appropriate funds for the current year set aside by the Governor, and extend the life of the program as the current legislative session draws to a close.

While these factors do not mitigate the procedural flaws in the developmental process that are reported in the audit, they help to make clear the circumstances under which they occurred.

COMMENTS ON DRAFT AUDIT REPORT

The following are the CDE's comments regarding specific information presented in the draft audit report.

DRAFT AUDIT REPORT INTRODUCTION - Report of Select Committee on Sampling and Statistical Procedures in CLAS

The draft audit report states at page 4 of the Introduction that the review of the process for item development did not include a review of the statistical methodology employed for selecting examinations for scoring because the Acting Superintendent of Public Instruction had appointed a panel of experts to evaluate this aspect of scoring the examination. The scoring of the examination has no logical connection to any of the stated purposes for this audit.

The auditors purport to summarize the Select Committee's report by highlighting certain problems without presenting the context. The problems cited are those characterized by the Select Committee as inherent in new types of assessment and are "not to be criticized as deficiencies in CLAS management." (Executive Summary, page 1; also see pages 9-10 of the "Report of the Select Committee on Sampling and Statistical Procedures in the California Learning Assessment System.") The particular example of a finding cited by the auditors was that of erroneous school reports. This matter was precisely the issue identified by CDE staff that prompted the Acting Superintendent to appoint the Select Committee last April.

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DRAFT AUDIT REPORT CHAPTER 1 - The CDE Used Similar Processes To Develop The CLAS Exams

Assessment advisory committees establish the CLAS examination blueprint

Under the section of the draft audit report discussing how advisory committees established the CLAS examination blueprint (Page 1-4), the auditors provide an interesting example of the process from the content area of science. Unfortunately, without clarification the reader may misunderstand the point of the section, thinking that the advisory committee's recommendations were not considered.

The example actually shows the data-based, dynamic nature of the process; in this case, how the recommendations of advisory committees are modified as information about what actually works best becomes available from field testing and analysis. Specifically, the proportion of the fifth-grade science exam originally projected to be devoted to open-ended and justified multiple-choice questions was reduced considerably after field test results indicated that the information yield from these types of questions was less than expected. Accordingly, the design for the 1994 examination was modified; a larger proportion of the examination could be devoted to the performance section leading to a more valid examination, without jeopardizing its reliability.

The CDE has standard procedures

In this chapter, the auditors report that CDE lacks specific written procedures for recruiting and selecting development team and balanced review panel members in all content areas except English/Language Arts. In fact, the CDE does have specific, well understood procedures for selecting members of the development teams for the other three content areas and for the balanced treatment review panels; however, these procedures are not in writing other than for English/Language Arts. The process used by the CDE to select members for the development teams and review panels in all four content areas is the same - the CDE solicited nominations of qualified individuals, requested applications from nominees, and interviewed applicants before selecting members.

This chapter goes on to conclude that because the CDE does not have written procedures, the recruitment and selection of team and review panel members may be unfair and inconsistent. However, the auditors did not find any evidence that the CDE's process of recruitment and selection is actually unfair or inconsistent. Therefore, we believe that the auditor's conclusion that it may be so is unfounded.

We also believe that the procedures CDE used are fair and consistent. The CDE will put its standard procedures for

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recruiting and selecting development team and balanced review panel members in writing. ① *

The CDE sought to broadly reflect California's diversity

The CDE strongly believes that California's educators and teachers should reflect the diversity of California's population as a whole. The CDE is actively involved in a number of efforts to achieve this goal.

Contrary to the draft report's conclusion, CDE's membership representation on the CLAS development teams did achieve its goal of reflecting California's diversity as best it could given the current ethnic and gender makeup of California's educators and teachers. The membership on balanced treatment review panels was intended to reflect and, where possible, actually have overrepresentation of minorities and females. The CDE submits it achieved what it set out to do.

Attachment 1 provides two tables displaying the composition of the development teams and review panels by ethnicity and gender, showing the representation on teams and panels for each of the four content areas of CLAS, the average for all four content areas, the representation in California's certificated staff in public schools in 1990-91, and the statewide population percentages from the 1990 census used by the auditors for making their judgements. As the tables demonstrate, the membership of each of the professional development teams closely reflected the ratios for each ethnic group and gender in the population of certificated staff from which they were largely drawn; and the ethnic membership on the balanced treatment review panels, which included non-educators, exceeded the general population percentages in all but one instance. The gender ratio for these panels was 60/40, with more females included while the general population is approximately 50/50. ②

Final selection process for review panels involved consultation and review by several people, including CLAS staff

The statement at page 1-10 of the draft audit report that the CDE did not provide evidence to support its statement that the final selection process for review panel members involved consultation and review by several people, including CLAS staff, is not accurate. The CDE did provide documentation to support its statement: it gave the auditors a list of the names of all individuals involved in the selection process. The individuals were CDE staff, contract staff and representatives from the education community. The auditors could have verified through interviews the involvement of those individuals. ③

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CDE increased number of public members on committees and panels

At page 1-11, the audit report accurately states that the CDE increased the number of public members on both the advisory committees and the community review panels (balanced treatment review panels), but implies that the CDE should have also increased public representation on development teams. The CDE did not add public members to the development teams because of the nature of the function of development teams. Development teams perform a technical function and are composed of educators, those with training and experience in test construction and expertise in the content area. The development process is designed so that development teams receive input from the public through the advisory committees and the review panels.

DRAFT AUDIT REPORT CHAPTER 2 - The CDE Used Contract Services To Meet Legislative Mandates Related To CLAS

Urgency and importance of CLAS

In August of 1990, Governor Deukmejian eliminated the California Assessment Program (CAP), its funding, and staff positions associated with the program. All state assessments of students in California ceased until January 1992 when SB 662 became law, calling for the development and implementation of a totally new student comprehensive assessment system on an extremely demanding timeline.

The requirement to implement the first phases of the assessment system in Spring 1993 required that all individual assessment tasks and formats be developed and field tested within five months, by June 1992, before students left on summer break. Examinations had to be finalized in the latter part of 1992, so that they could be printed and administered to students in Spring 1993. See Attachment 2 for a detailed list of CLAS activities.

The CDE used the Far West contract to supplement CDE civil service staff, not to circumvent the state's civil service system

Chapter 2 of the draft audit report states that the CDE circumvented the state's civil service system by contracting with Far West Laboratory for Educational Research (Far West). Because of the complete elimination of the funding and positions for the prior assessment program, in Spring 1992 the CDE no longer had many of its assessment staff available to work on CLAS activities.

The CDE pulled together all available staff to work on CLAS; however, it soon became apparent that the CDE had no way to meet the challenging timelines required for implementing the new assessment system mandated by SB 662 without the assistance of

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additional personnel. Initially, the CDE had only 11 staff to conduct CLAS activities, far less than the 28.5 positions reflected in the five-year plan or the 27 staff that operated the CAP. The CDE needed to move quickly to meet legislative mandates.

The efforts to complete CLAS activities left little time for CLAS management or staff to conduct civil service personnel justification, recruitment and hiring activities in Spring and Summer 1992. Any time spent by CLAS staff doing paperwork to restore positions or add new positions jeopardized chances of meeting the deadlines necessary to meet the expectations of the Governor's Office and the Legislature that the CDE implement the new assessment program on a very fast track, specifically that the CDE would actually implement CLAS statewide in the Spring of the 1992-93 school year. With the help of contractors, the CDE was able to meet the CLAS deadlines, a major accomplishment considered impossible by many.

In an effort to expeditiously obtain competent assistance with the CLAS activities in a way which afforded flexibility in duration of employment, the CDE entered into contracts with four county offices of education and Far West. Far West is a joint powers, non-profit agency whose purpose is to conduct educational research and develop educational improvements for schools, colleges, and universities in California and neighboring states.

In order to meet the next commitment to the Governor's Office - that the CDE implement the first phase of individual student assessment in the Spring of the 1993-94 school year - it was essential that the CDE continue to use contractors. Quickly filling the vacant state positions was difficult. The state civil service process simply could not move rapidly enough to meet CLAS's staffing needs, especially given the difficulty of recruiting qualified personnel for these highly technical positions. Furthermore, the Department of Finance denied all of the CDE's subsequent requests for additional personnel to carry out the specific new requirements of SB 662, some of which would have replaced contracted staff. Attachment 3 provides a flowchart of the CDE's efforts to recruit staff for the assessment unit from January 1992 until the present. ④

Throughout the past three years, the CDE has made numerous attempts to fill vacant positions and obtain additional positions to complete the mandated CLAS activities. Most of these attempts have been unsuccessful. While funding for CLAS has increased, along with substantial workload increases as evidenced by the increase in the number of teachers and scoring sites involved in regional scoring of CLAS examinations, the number of CDE staff to administer the CLAS program has increased only slightly. The graphs in Attachment 4 clearly contrast CDE staffing with workload.

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An additional factor facing the CDE related to staffing has been the unstable nature of funding for the CDE in general and CLAS in particular. From year to year, the CDE has been uncertain of future funding for the total CDE operating budget. For fiscal year 1991-92, \$6.3 million was cut from the CDE's general fund budget; 69 positions were defunded and/or eliminated. For fiscal year 1992-93, \$5.8 million was cut from the CDE's general fund budget and another 40 positions defunded and/or eliminated. For fiscal year 1993-94, \$4.7 million was cut from the CDE's general fund budget. As a result of the 1991-92 budget cuts, the CDE initiated layoff proceedings in July 1991. Multiple freezes of General Fund hiring and operating expenses have been necessary since then.

Because of repeated annual general fund budget reductions, the CDE's employment environment has been very unstable. The CDE has been even more uncertain of funding for CLAS. As stated above, in 1990 the CAP and all of its staff positions were abolished by the Governor. Again, in acting on the 1994-95 State budget, the Governor deleted all funding for CLAS. This uncertainty has made it extremely difficult to recruit capable, highly technical staff into civil service.

As stated in the audit report, Government Code section 19130(b) describes conditions under which state agencies are allowed to contract for personnel services. Specifically it provides for contracting where the services contracted "are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system," where "legislative . . . goals and purposes cannot be accomplished through utilization of persons selected pursuant to the regular civil service system," or where the services "are of an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose" (Government Code sections 19130(b)(3), (5) and (10)). The situation faced by CDE since 1992 clearly meets these conditions. ⑤

Far West provided assistance with administration of CLAS

The audit report mischaracterizes Far West as a "fiscal agent", implying they provided no service to CDE. The CDE's contract with Far West requires Far West to provide many types of services related to the administration of CLAS. The CDE contracted with Far West for assistance in the coordination of three contractors who were providing research and development work for the CDE, as well as to obtain technical personnel. The three contractors each had differentiated, but highly interdependent responsibilities related to the administration of CLAS. Far West was to assist the CDE in scheduling, coordinating, observing, and evaluating the workplans of the various contractors. ⑥

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To succeed, the CLAS required the coordinated efforts of many stakeholders - parents, teachers, students, schools, and county offices of education. Far West's role was to facilitate the work of the advisory committees, development teams and balanced treatment review panels. To ensure that parents, schools, businesses and postsecondary institutions understand the CLAS achievement information, Far West was contracted to assist the CDE in educating these stakeholders.

CDE did not "hinder opportunities" for individuals who passed state civil service examinations as stated in the draft audit report

As outlined in Attachment 3, since January 1992, the CDE has conducted 27 recruitments to fill vacant CLAS positions from state civil service lists, screened 337 applications, and conducted 83 interviews. For example, in May 1992, the CDE recruited unsuccessfully to fill vacant Executive Secretary and Office Assistant positions. In December 1992, the CDE advertised all its vacant education research consultant and analyst, education program consultant and analyst, and Account Clerk positions. In February 1993, the CDE conducted a second recruitment for the education research and program consultant and analyst positions.

Some of these recruitment efforts did result in the addition of new staff to CLAS; the CDE has hired 11 staff for CLAS since January 1992. The CDE has used and will continue to use, to the extent possible, the civil service process to fill vacant positions for CLAS. Therefore, the auditor's conclusion that the CDE has not given individuals who have passed state civil service examinations an opportunity to compete for CLAS positions is not accurate. ⑦

Personnel agency administrative fee includes employee benefits

The draft audit report implies that the 24 percent charged by the personnel agency used by Far West was only an administrative fee. The 24 percent includes the cost of benefits paid for the employees. It is comprised of Social Security Tax at 7.65 percent, State Unemployment Tax at 4.9 percent, Federal Unemployment Tax at 0.8 percent, Workers Compensation Insurance at 0.8 percent, and 9.85 percent to cover administrative expenses. These administrative expenses include such items as file maintenance; postage; payroll checks, envelopes, and other stationery-type supplies; year-end bookkeeping and preparation of W-2 forms; and other related charges. ⑧

Far West administration fee

The draft audit report implies that the Far West fees were excessive. Far West is required by federal regulations and Office of Management and Budget Circular A-122 (Cost Principles for

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Nonprofit Organizations) to establish an indirect cost rate which is to be applied consistently on all contracts and grants. This is the indirect cost rate which Far West applied to its CDE contract expenditures. Indirect costs are costs that have been incurred for common objectives and cannot be specifically identified with a particular contract. The indirect costs incurred are grouped together by common functions, such as accounting, contract administration and data processing. Each of these functions is essential to each and every contract, though each contract may not use each function in the same proportion.

The draft report implies that Far West may have over charged the CDE in 1993 because Far West reduced its administrative fee in December 1993. Far West reclassified its costs directly charging some costs which had previously been included in its indirect cost rate. This explains why Far West's indirect cost rate decreased from 26.5 percent to 12.3 percent.

DRAFT AUDIT REPORT CHAPTER 3 - Monitoring of Contractors

CDE will monitor contractors to ensure travel costs are not excessive

The CDE contacted the county offices of education who have contracts with the CDE for CLAS activities regarding this finding. It appears that there may have been some confusion between state and local contracting procedures and requirements. Due to differences in local and state travel reimbursement procedures, paying meal and lodging costs above state reimbursement rates was considered appropriate if there was no charge or a reduced charge imposed for the cost of meeting rooms. When meeting room costs are factored in, the meal costs reported by the auditors are lower and are generally within the state reimbursement rates. The CDE is providing the county offices of education the opportunity to demonstrate their cost savings. ⑨

The CDE will clarify state contracting procedures and requirements for Far West and the county offices of education. In the future, CDE staff will require detailed documentation of travel charges invoiced by county offices of education and carefully monitor the invoices of all contractors to ensure that they do not exceed established state rates. The CDE will review all of the travel costs for all of the contracts and take appropriate action.

CDE receives frequent progress reports from contractors

The draft audit report states that the CDE does not receive written progress reports with contract invoices. State Administrative Manual section 1258 states that progress payments should be based upon written progress reports submitted with the contractor's invoices. The use of the term "should" indicates that this is only

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a guideline and not a requirement. In addition, the CDE's contract language does not specifically require written progress reports. ⑩

Even though the CDE requires CLAS contractors to provide far more than a monthly written progress report, the CDE agrees it is a good idea to obtain a written progress report with each contract invoice. As a general practice, the CDE requires formal progress reports no less frequently than monthly (these reports are not necessarily in writing attached to invoices) and on a daily basis receives input on the progress of contract work through faxed and mailed documents, participation in conference calls and visits to contract sites. The CDE closely monitors contractor work on CLAS by working side-by-side with contractors on a daily basis, making direct telephone calls to contractors, and reviewing preliminary and final contract work products. The CDE will request written progress reports with contract invoices.

CDE has internal controls in place to detect contract payment errors

The CDE's incorrect calculation of the 10 percent retention amount for two of the progress payments to Far West was an inadvertent error. The incorrect calculations were detected and corrected before final payment was made to Far West.

In addition, the CDE made two payments to Far West for the same invoice. This duplicate payment was also inadvertent. The CDE detected and corrected the duplicate payment before final payment was made to Far West. In both instances, the errors were identified through the CDE's system of internal controls and corrected by CDE staff.

The auditors reviewed a sample of 148 payments made by the CDE from January 1992 through May 1994 and found that the CDE had made three errors in payments -- a two percent error rate. The auditors found no errors which had not already been detected by the CDE's internal controls.

DRAFT AUDIT REPORT CHAPTER 4 - CDE Followed Competitive Bidding Process For Awarding Contracts

As stated in the draft audit report, the CDE appropriately followed the state competitive bidding process in awarding contracts for CLAS activities. All 17 CDE contracts identified in the draft audit report met Public Contract Code and State Administrative Manual requirements.

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Contractors started work at their own risk before the contracts were approved; CDE contracts did not expose the State to potential monetary liability

The draft audit report identified 16 CLAS contracts where work commenced before final approval was obtained from the Department of General Services (DGS). Each of these 16 contracts contained late justifications which were accepted by the DGS. The late justification process anticipates that state agencies may submit contracts to the DGS for approval without the requested lead time. DGS ultimately approved the 16 CLAS contracts.

There is no liability to the State when work is performed at the contractor's risk as specified in each of the 16 contracts. When a contractor starts work before a contract has been approved by DGS, the contractor accepts the risk of potential nonapproval of the contract. Each of the CLAS contracts contained specific language to provide this safeguard. If a contract is not approved by DGS, the contractor can submit a claim to the State Board of Control to obtain approval of payment for services rendered. The State Board of Control process provides an additional control for ensuring that the State's interests are protected. (11)

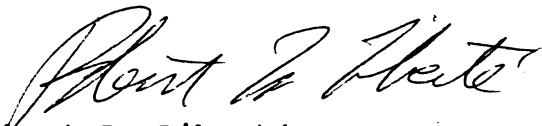
County offices of education used the same companies as subcontractors

The draft audit report at pages 4-4 and 4-5 implies that the county offices of education somehow acted inappropriately when awarding subcontracts to companies which the CDE had previously contracted with directly. The county offices of education subcontracted with these private companies because the private companies have demonstrated expertise in education testing, scoring, and analysis, not for any other reason.

It should also be noted that the subcontractors worked for the county offices of education, not the CDE as implied on page 4-4 of the draft audit report. The subcontractors performed a variety of services for the county offices of education. These services were specified in the CDE's contract with the county offices of education.

If you have questions about this response, please contact the CDE's Audit Response Coordinator, Peggy Peters, at (916) 657-4440.

Sincerely,



Robert La Liberté
Executive Deputy Superintendent

Table 1.
Composition of CLAS Development Teams by Ethnicity and Gender for Each Content Area

	English-Language Arts ^a		History-Social Science ^a		Mathematics ^a		Science ^a		CLAS Average %	Certificated Staff ^D %	Statewide ^{a,c} %
	Number	%	Number	%	Number	%	Number	%			
Ethnicity											
African American	5	13%	14	16%	2	7%	2	15%	13%	6%	7%
Asian American ^d	1	3	3	4	0	0	1	8	4	4	9
White	28	73	64	75	24	77	9	69	73	81	57
Hispanic	3	8	4	5	5	16	1	8	9	8	26
Native American ^e	1	3	0	0	0	0	0	0	1	1	1
Gender											
Female	33	87	54	64	24	77	10	77	76	68	50
Male	5	13	31	36	7	23	3	23	24	32	50
Totals	38		85		31		13				100%

^a Source: Bureau of State Audits, Draft Audit Report 94109.

^b Source: California Department of Education, CBEDs data on ethnic/gender distribution of California's certificated staff in 1990-91.

^c Source: 1990 census data taken from the 1993 California Statistical Abstract Department of Finance.

^d Statewide percentage also includes Pacific Islanders.

^e Statewide percentage also includes Eskimos, Aleuts, and others.

Table 2.
Composition of CLAS Balanced Treatment Review Panels by Ethnicity and Gender for Each Content Area

	English-Language Arts ^a		History-Social Science ^a		Mathematics ^a		Science ^a		CLAS Average %	Certified Staff ^b	Statewide ^{a,c}
	Number	%	Number	%	Number	%	Number	%			
Ethnicity											
African American	3	19%	3	25%	5	34%	5	38%	29%	6%	7%
Asian American ^d	4	25	1	8	2	13	3	23	17	4	9
White	6	37	3	25	6	40	1	8	28	81	57
Hispanic	3	19	3	25	2	13	3	23	20	8	26
Native American ^e	0	0	2	17	0	0	1	8	6	1	1
Gender											
Female	10	63	10	83	6	40	7	54	60	68	50
Male	6	37	2	17	9	60	6	46	40	32	50
Totals	16		12		15		13				100%

^a Source: Bureau of State Audits, Draft Audit Report 94109.

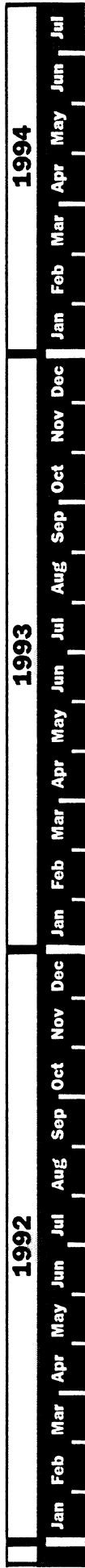
^b Source: California Department of Education, CBEDs data on ethnic/gender distribution of California's certified staff in 1990-91.

^c Source: 1990 census data taken from the 1993 California Statistical Abstract Department of Finance.

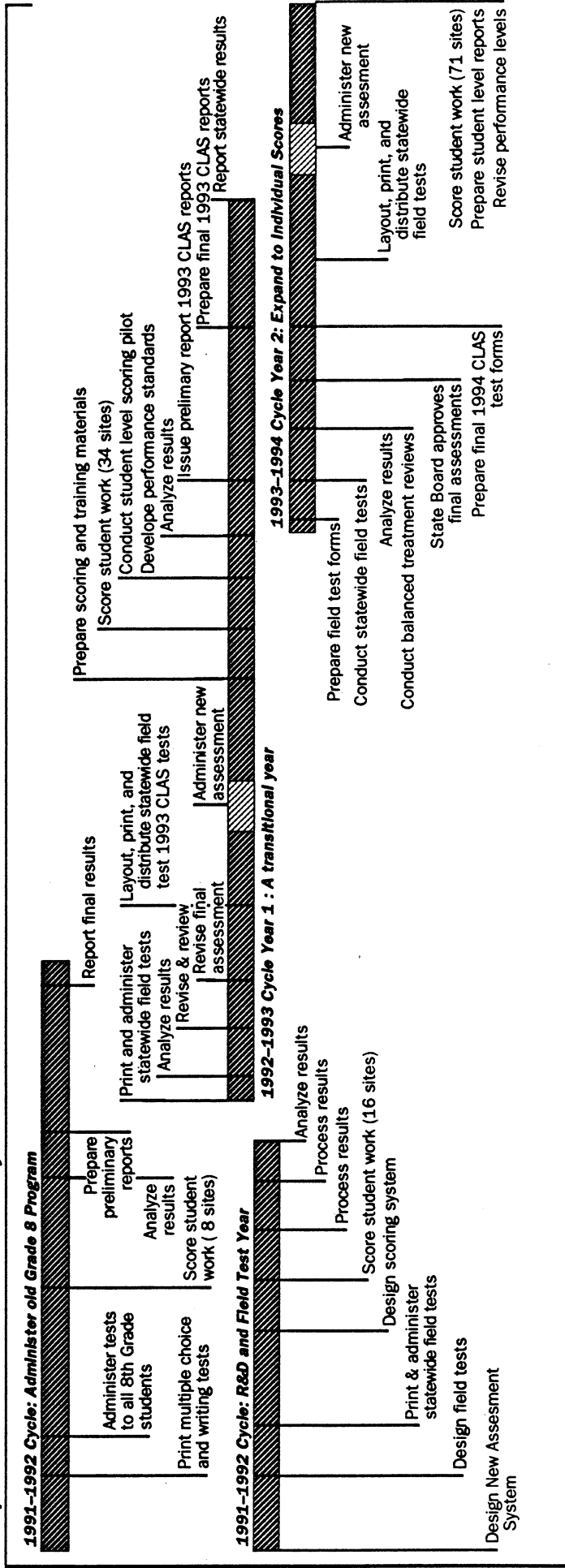
^d Statewide percentage also includes Pacific Islanders.

^e Statewide percentage also includes Eskimos, Aleuts, and others.

Timeline of CLAS activities

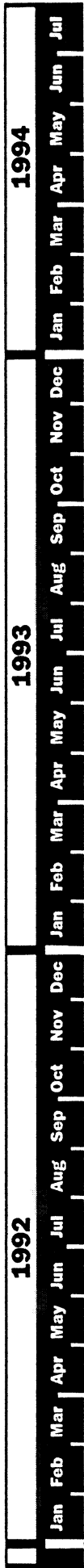


Scope of Work - Annual Assessment Cycles



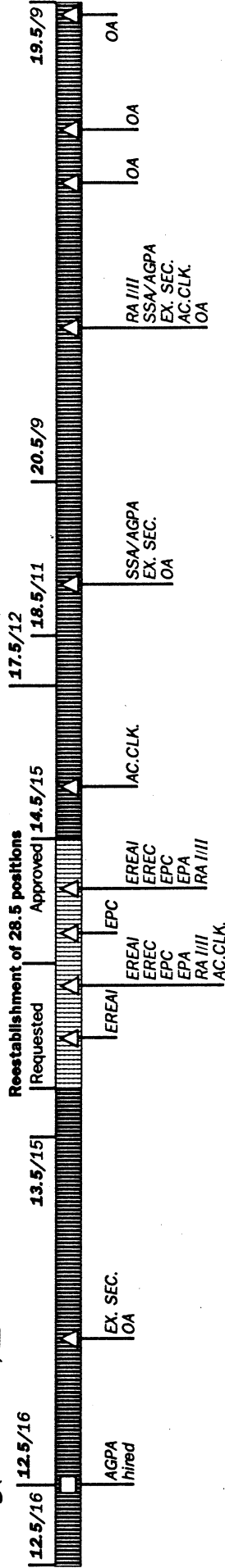
Note: During this same period, CLAS staff was also administering the Golden State Exam program; conducting field trials of a Spanish language version of the CLAS assessments; assisting with the Career-Technical Assessment System; coordinating the California Assessment Collaborative; administering the Physical Fitness Exam Program; coordinating three statewide portfolio assessment development projects; participating in six interstate assessment collaboratives; preparing a variety of samplers and other materials to communicate the nature of the new assessment system; preparing optional forms to help districts develop their own capacity for performance-based assessment systems; and coordinating the California component of the National Assessment of Educational Progress.

CLAS Civil Service Staff Recruitment Progress



Jan. 1 SB 662 becomes effective
(Gov. Wilson signed in Oct. 1991)

Staffing (filled/vacant) Δ=recruitment

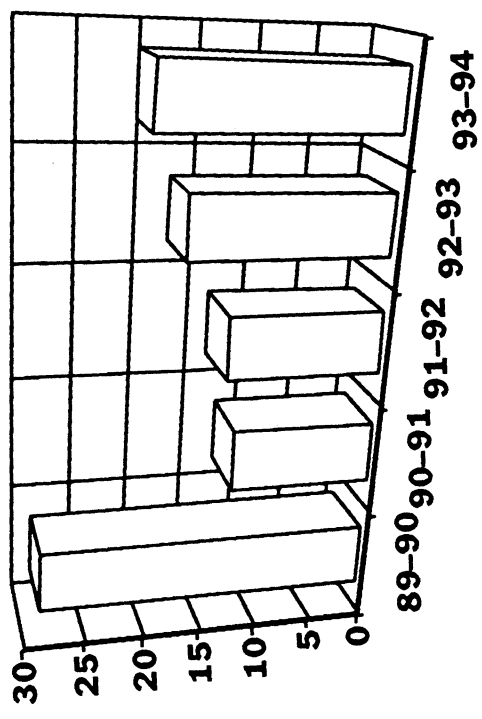


Key to Positions Recruited

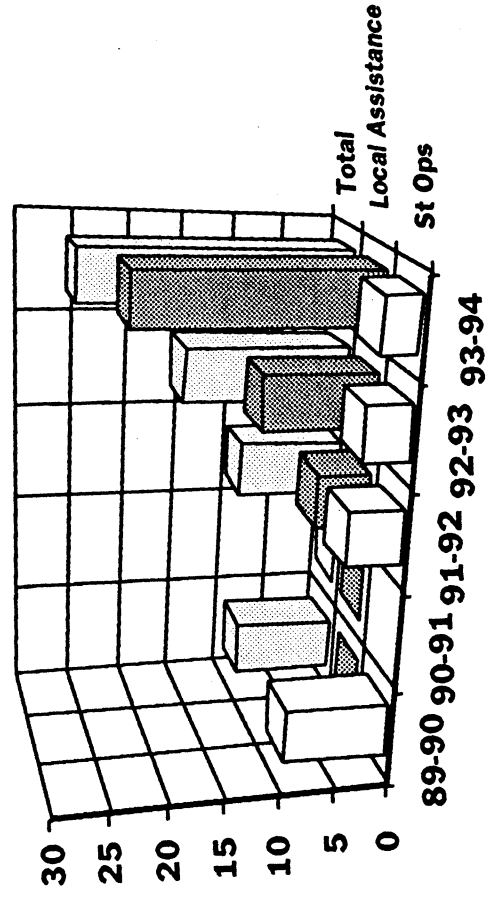
- EREAI Education Research and Evaluation Administrator I
- EREC Education Research and Evaluation Consultant
- EPC Education Programs Consultant
- EPA Education Programs Assistant
- RA /III Research Analyst I/II
- SSA/AGPA Staff Services Analyst/ Associate Governmental Program Analyst
- AC. CLK. Account Clerk II
- EX. SEC. Executive Secretary II
- OA Office Assistant II (Typing)

337 Applications screened
83 Interviews Conducted
11 New Hires From Advertisements

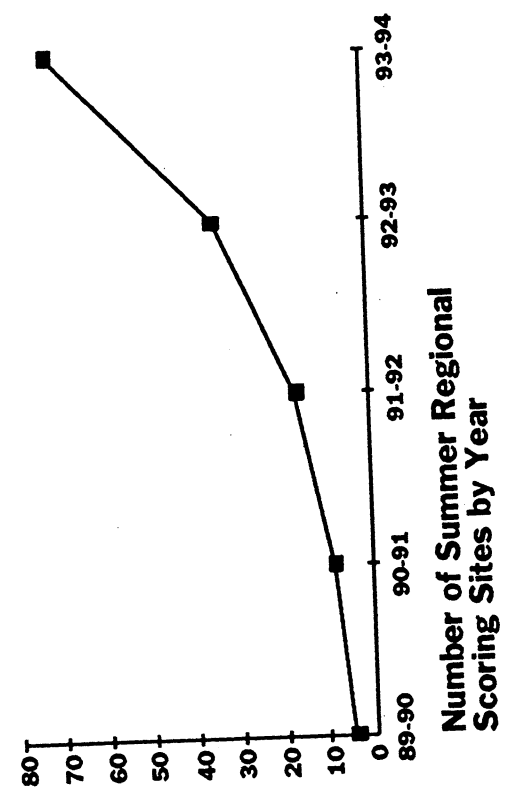
Contrast of CDE Staffing With Workload



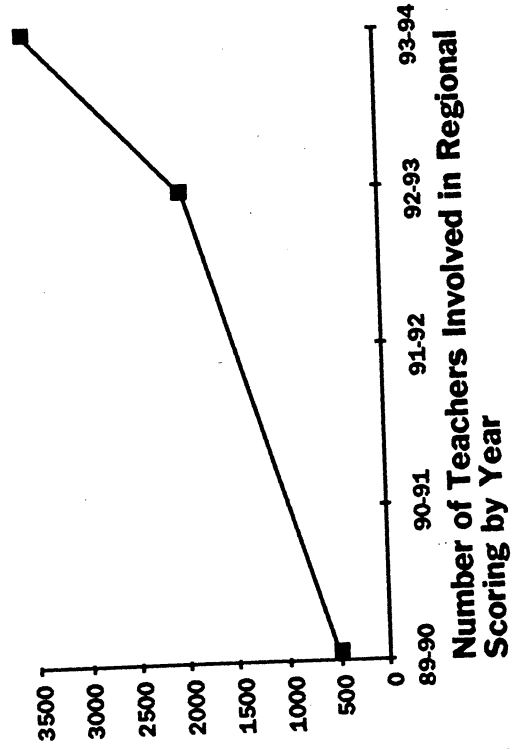
Filled CLAS Staff Positions by Year



CLAS Funding by Year and Type



Number of Summer Regional Scoring Sites by Year



Number of Teachers Involved in Regional Scoring by Year

California State Auditor's Comments on the Response From the Department of Education

To provide clarity and perspective, we are commenting on the Department of Education's (department) response to our audit report. The numbers correspond to the numbers we have placed in the department's response.

- ① As we state in our report, the department did not use standard written procedures to recruit and select members for all of the development teams or review panels. Furthermore, the department could not demonstrate that the procedures it states it used for all four content areas were fair and consistent. However, we are pleased that the department plans to implement our recommendation to develop and follow standard written procedures to recruit and appoint new members to the various committees, teams, and panels, and to ensure that the procedures are fair and consistent for all four content areas.
- ② In a letter of representation signed by the executive deputy superintendent, the department told us that it strived to create teams and review panels that broadly reflected the diversity of California's population as a whole. However, in its response to our audit report, the department is now stating that the diversity of the development teams should be evaluated based on the population of certificated staff. By using the ratios for each ethnic group and gender for certificated staff, the department is able to present a more favorable comparison since the percentages of certificated minorities are lower than minorities in the population as a whole. Moreover, the department's inclusion of the certificated staff statistics on Table 2 of its response as the basis for evaluating the composition of the balanced treatment review panels is misleading since these panels were to include noneducators from the general population.

It is also misleading for the department to evaluate the diversity of the development teams and review panels based on a combined average percentage of the ethnic membership in all four content areas, since the teams and panels in each of the specific content areas are separate groups and work independently of one another during the exam development process.

- ③ Text changed.
- ④ As stated on page 23 of our report, we determined that the Department of Finance denied the department's requests for additional personnel because it had requested additional funds to pay for the civil service positions rather than redirecting the existing money that it was currently using to pay the contract employees through the Far West Laboratory for Educational Research and

Development (Far West) contract. Moreover, we noted that the department requested the additional funds for the positions even though the Department of Finance had previously notified all state agencies that it would reject requests for general fund monies that did not redirect existing funds from other areas.

- ⑤ The department indicates that the unstable employment environment and the uncertainty of the funding for the California Learning Assessment System (CLAS) made it extremely difficult to recruit capable, highly technical staff into civil service. However, SB 662 required that the department develop and implement the CLAS exam over a five-year period. Thus, the CLAS program did not have an uncertain future. Furthermore, the department could have pursued other options available through civil service to address the short-term funding. For example, the civil service process provides for limited-term appointments to fill temporary staffing needs.

Additionally, the department indicated that it required the services of highly technical staff. In general, the duties of its contract employees were not highly specialized or technical in nature when compared with the department's existing civil service classifications. Moreover, as stated on page 22 of our report, the department hired three of the contract employees into the CLAS unit as civil service employees in July and August 1993. In addition, the department did not use the contract employees for services of an urgent, temporary, or occasional nature as required to justify avoiding civil service rules. For example, one contract employee has worked for the department since April 1988, and four others have worked for the department since May 1992.

- ⑥ We agree that Far West provided other services to the department. However, we focused our review on the department's use of Far West as a fiscal agent to pay the costs related to its contract employees.
- ⑦ The department claims that it did not hinder opportunities for individuals who passed state civil service examinations. However, the fact remains that the department obtained the services of 28 contract employees who worked for the department from May 1992 through May 1994, thus depriving civil service employees of job opportunities.
- ⑧ The department did not provide us with documentation to support the composition of the 24 percent charged by the personnel agency. However, our point is that the 24 percent was paid in addition to the 26.5 percent administrative fee that Far West charged for simply including the payroll costs from the personnel agency on its invoice to the department.

- ⑨ The department stated that the contractors or the department may have been confused between state and local travel reimbursement procedures. However, as stated on pages 25 and 26, the contracts awarded to Far West and the county offices of education (COE) clearly state that all travel costs would be reimbursed in accordance with state rules. Therefore, the department should review all invoices from the COEs and Far West and recover all travel costs that exceeded the state reimbursement rates.

- ⑩ The department was incorrect when it stated that its contract language did not specifically require written progress reports. As stated on page 27 of our report, the contracts with the COEs did require them to submit a written summary of progress with each invoice.

- ⑪ The department asserts that it did not expose the State to monetary liability by allowing contractors to start work before contract approval by the Department of General Services. We disagree that there is no liability to the State since each contract could be subject to litigation. Furthermore, in our experience in reviewing contracts, state agencies do not place contractors in jeopardy of not being paid.

cc: **Members of the Legislature**
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps