



Joint Legislative Audit Committee
Office of the Auditor General



**BILINGUAL EDUCATION:
PUPIL ASSESSMENT, PROGRAM
EVALUATION AND LOCAL PROGRAM
IMPLEMENTATION**

Our review of bilingual education programs in the State has revealed several areas which need improvement. These relate to:

- The annually required census of limited- and non-English-speaking (LES/NES) pupils
- Evaluation requirements for bilingual education programs
- Policies for placement of pupils in the regular classroom once they have become fluent in English
- Staffing requirements and mandates for inclusion of students who are not LES/NES.

We have recommended actions to improve administration in these areas of bilingual education.

REPORT TO THE
CALIFORNIA LEGISLATURE

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

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BILINGUAL EDUCATION:
PUPIL ASSESSMENT, PROGRAM EVALUATION AND
LOCAL PROGRAM IMPLEMENTATION

MARCH 1979



California Legislature

Joint Legislative Audit Committee

GOVERNMENT CODE SECTION 10500 et al

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March 12, 1979

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report concerning implementation of aspects of the State's bilingual education program.

The report identifies several areas in which the Department of Education's administration of the bilingual program needs improvement. It addresses the need for clarification of guidelines to school districts pertaining to program requirements. It also identifies problem areas cited by school districts in implementing programs to meet the needs of limited and non-English speaking pupils.

The auditors are Dr. Joan S. Bissell, Supervising Auditor; Robert E. Christophel, Supervising Auditor; Dennis L. Sequeira and Enrique G. Farias.

Respectfully submitted,

A handwritten signature in cursive script that reads "Richard Robinson".

RICHARD ROBINSON
Assemblyman, 72nd District
Chairman, Joint Legislative
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SUMMARY

We have reviewed the implementation of several components of the State's bilingual education legislation. This review focused on procedures for identifying, placing and evaluating limited-English speaking and non-English speaking (LES/NES) pupils.

The review revealed several areas in which the Department of Education's administration of the bilingual program needs improvement. Specifically, the Department should clarify school district guidelines which direct local implementation of program requirements. Additionally, the Department has not fully executed some of its responsibilities in accordance with present statutes.

Among the specific problems we identified were:

- Some local districts are confused concerning procedural requirements used as part of the annual census to identify LES/NES pupils
- The Department of Education has failed to provide for the collection of all statutorily required census information and has not audited census results

- The Department has not directed local districts concerning procedures for determining when pupils are ready to be transferred into the regular program (i.e., "exit criteria")
- The Department has issued incomplete guidelines concerning annually required testing of student achievement, and such testing as presently mandated has questionable utility.

School districts may be incurring unnecessary costs as a result of inefficient or unnecessary testing and assessment procedures. Additionally, there is a lack of consistent information for planning and judging the effectiveness of programs serving limited- and non-English-speaking pupils.

Other problems we identified were:

- Some school districts are confused concerning the objectives of the State's present bilingual education program; of particular concern is the extent to which the program is intended to emphasize "maintenance" of pupils' primary language as opposed to "transition" into complete classroom functioning in English

- Local districts are having difficulties in meeting present requirements for use of certified bilingual-crosscultural teachers in bilingual education programs
- Schools are experiencing problems in meeting the requirement that at least one-third of pupils in bilingual classes be fluent-English speaking.

We have found that problems in implementation of bilingual education requirements stem both from diffusion of administrative responsibilities within the Department of Education and from inherent difficulties in meeting certain statutory requirements.

We recommend that the Department establish specific procedures for fully executing its designated responsibilities in providing educational services to LES/NES pupils, including attention to pupil assessment and program evaluation requirements. The Department should also identify for the Legislature areas of the present bilingual education statutes which are not feasible for it to administer or which may not be cost-effective at the local level.

INTRODUCTION

In response to a resolution of the Joint Legislative Audit Committee and under the authority vested in the Auditor General by Government Code Section 10527, we have conducted a review of the implementation of the State's bilingual education legislation. The review focused on procedures for identifying, placing and evaluating limited-English speaking and non-English speaking (LES/NES) pupils.

Section 52163(d) of the Education Code defines LES/NES pupils as those:

. . . who do not have the clearly developed English language skills of comprehension, speaking, reading and writing, necessary to receive instruction only in English at a level substantially equivalent to pupils whose primary language is English.

Background

The State's present bilingual education program is based upon the Chacon-Moscone Bilingual/Bicultural Education Act of 1976 (Chapter 978, Statutes of 1976--AB 1329) as amended. The statute requires that schools in the State offer bilingual learning opportunities to LES/NES pupils under various specified conditions. The legislation also requires an annual census

identifying LES/NES pupils and an annual program evaluation through pre- and post-testing of pupil achievement. (See Appendix A for a summary of LES/NES pupil testing and assessment requirements.)

The census requires school districts to report to the Department of Education by April 30 of each year the number of pupils who are limited-English speaking and those who are non-English speaking and the number enrolled in bilingual education programs. The report is also to indicate the number of LES/NES pupils who have demonstrated adequate proficiency to be placed in mainstream classes. Census data are to be used by schools to plan bilingual classes and programs and by the Department of Education to determine the amount of funding allocated to districts for bilingual education programs. The Department also uses the data to prepare its annual report on bilingual needs and programs.

As of the present school year, each district is required to submit an annual evaluation of LES/NES pupil progress to the Department of Education. Each district is to assess pupil achievement in comprehending, speaking, reading and writing English and, to the extent assessment instruments are available, the pupil's abilities in his second language. The districts are to conduct pre-testing at the beginning of the school year and post-testing at the end of the school year.

Funding to support bilingual education programs in California comes from a variety of sources, including the Chacon-Moscone Bilingual/Bicultural Education Act of 1976 and two major compensatory education programs--Title I of the federal Elementary and Secondary Education Act and the State's Educationally Disadvantaged Youth (EDY) program.* Other state and federal sources provide additional funds (e.g., Title VII of the Elementary and Secondary Education Act).**

* The Legislature consolidated funding for the State bilingual education program and the educationally disadvantaged youth program (EDY) into the new Economic Impact Aid (EIA) program through Chapter 894, Statutes of 1977 (AB 65). The EIA provisions are scheduled to go into effect on July 1, 1979.

** Also included is funding authorized under the State's earlier bilingual education legislation (Chapter 1258, Statutes of 1972--AB 2284).

SCOPE AND METHODOLOGY

In conducting our review, we visited 17 school districts.* The districts were selected to include a range of grade levels (elementary/secondary) and locations (rural/urban/suburban) and varying concentrations of LES/NES pupils. The number of LES/NES pupils in the districts ranged from 142 to 8,340. We visited 19 schools in the districts, with the number of LES/NES pupils in the schools ranging from 5 to 233.

We interviewed district and school staff and collected data concerning:

- The identification and assessment procedures used for placing pupils in bilingual programs
- The criteria used for determining when pupils no longer needed bilingual education and could be transferred into the regular classroom
- The number of years pupils participated in bilingual education programs

* Some additional information was collected from a few other districts not in the primary sample. The information was used for further clarification of study issues rather than being included in the principal findings presented in the report.

- The participation of LES/NES pupils in other compensatory education programs and other special programs
- Methods used by districts to perform pre- and post-testing required for annual program evaluation
- The costs of administering required pupil identification, testing and evaluation procedures.

We also provided districts the opportunity to identify other program implementation issues and problems.

Some issues originally included within the study could not be examined due to changes in the bilingual education legislation such as changes in procedures and reporting dates for the annual census.*

In addition, the lack of accurate, comprehensive data at the district and school levels made it difficult to provide definitive information on some topics. For example, it was impossible to provide precise figures concerning the overall costs of conducting the Home Language Survey or of determining pupil language proficiency.

* These issues included a review of the accuracy of the 1978-79 census data and district compliance with census requirements.

AUDIT RESULTS

ASPECTS OF THE STATE DEPARTMENT OF EDUCATION'S IMPLEMENTATION OF THE BILINGUAL EDUCATION PROGRAM COULD BE IMPROVED

The State Department of Education's (SDE's) administration of the bilingual program needs improvement in several areas. These areas relate to the Department's failure to provide school districts with adequate guidelines which ensure efficient and complete local implementation of program requirements. In addition, the Department has not completely executed some of its statutorily designated mandates. School districts may be incurring unnecessary costs because of inefficient census and/or testing procedures. Overall, there is a lack of valid and consistent information for planning and judging the effectiveness of programs serving limited- and non-English speaking pupils.

Annual Census Procedures

Section 52164 of the Education Code directs each school district to conduct a census of limited-English speaking pupils by March 1 of each year under regulations prescribed by the State Board of Education. The census is to determine the primary language of each student enrolled in the district and to assess the language skills of all students whose primary language is

other than English. The annual census is not intended to provide a new assessment for each pupil in the district but rather it updates the prior year's census by listing new enrollees, eliminating pupils no longer LES/NES, and making other necessary changes. The census is important since it identifies those pupils to be provided bilingual instructional services and determines the program requirements for schools and the amount of state resources to districts for providing programs for LES/NES pupils.

The Department of Education is to prescribe census-taking methods and to designate the census instruments for school districts' use. To determine pupil primary home language, the Department designated the Home Language Survey for use in 1978-79. (The survey was first used beginning in the 1977-78 school year.) Pupils whose primary home language is other than English are to be tested in four skill areas: English comprehension, speaking, reading and writing. The Department has provisionally designated four instruments for district use in this assessment process during 1978-79.

Confusion Concerning Home
Language Survey Requirements

The Department of Education guidelines to school districts for administration of the Home Language Survey (HLS) as indicated in a department memorandum state that:

The HLS form will be sent to the home of each new kindergarten pupil, each newly enrolled pupil whose files do not contain evidence of his/her being surveyed in 1977-78, and any special education pupils and migrant education pupils who were not surveyed in 1977-78.

There has been some confusion among districts concerning the Home Language Survey requirements. Several districts and schools we visited indicated that using the HLS during annual registration of pupils could save both time and money. However, the Department of Education guidelines specify that the survey is to be sent home to the student's parents. An official from the Office of Bilingual/Bicultural Education indicated to us that despite these written guidelines, administering the Home Language Survey during registration was acceptable. The Department should clarify this issue to provide appropriate flexibility for census efficiency.

Selected Assessment Instruments
Do Not Satisfy Legislative Requirements

For those students identified through the Home Language Survey as having a primary language other than English, each school district is required to assess language proficiency in order to classify and determine the total number of LES/NES pupils within the district. The Department of Education is to prescribe assessment instruments for school districts' use. In September 1978, the Department of Education provisionally recommended four testing instruments for assessment of pupil language proficiency. However, only one assesses all four skill areas identified in the statutory definition of a limited-English speaking pupil. The remaining three only assess oral language skills.

The fact that different instruments measure different skills is significant because it can cause a substantial variation in the number of pupils identified as LES/NES. A test which measures a pupil's reading and writing skills may identify that pupil as limited-English speaking, whereas a test measuring only oral language proficiency may not. Pupils may not be designated as needing instructional services in one district who would be so designated in another district, simply due to variations in the range of skills which different instruments may assess.

In order to understand the problems in this area, it is useful to review the findings of the Bilingual Instrument Review Committee established by the Department of Education to recommend the instruments for the census. The Committee reviewed available tests assessing the four skill areas specified in the legislation and determined that due to the limited availability of tests measuring all four skill areas, they would have to recommend instruments which measure language comprehension and speaking but not reading and writing. As a result, three of the four instruments they recommended and the Department provisionally designated do not fully identify limited-English speaking pupils in accordance with the legislative definition. Only 6 of the 17 districts we visited were using the one test which measures all four skill areas.

The Department's selection Committee recognized the discrepancy and the need for review of which skills should be assessed as part of the census. The Committee recommended that in view of the limited number of appropriate tests, the census should be delimited to the assessment of comprehension and speaking.

Failure of SDE to Collect All
Required Census Data

The Education Code Section 52164 requires each school district to report annually to the Department of Education

". . . the total number of limited-English speaking pupils within the district," classified according to "primary language, age and grade level." Although this requirement has been in effect since 1976, the Department of Education has not collected information concerning one statutorily specified component--pupil age--in the annual census. An official from the Office of Bilingual/Bicultural Education stated that pupil age information has not been collected due to limitations in the Department's data management system. Additionally, department staff indicated that since grade level and age are similar, specific age data were unnecessary. However, some individuals consider both pupil age and grade level data for LES/NES pupils important because it may aid in indicating the rate of progress of these pupils. Therefore, the need for such data to be reported annually and appropriate department steps to implement requirements in this area warrant review.

School districts are also now required to report annually:

. . . the number of pupils whose primary language is other than English, the number of pupils who are non-English speaking, and the number of pupils who are limited English speaking. Each school district shall further report the total number of pupils whose primary language is other than English who are enrolled in [bilingual classes], the number of such pupils who have become bilingual and literate in English and in their primary language, and the numbers of such pupils who have demonstrated adequate proficiency to be placed in mainstream classes. (Education Code Section 52164.5)

Although this mandate took effect in September 1978, the Department will only be collecting some of the specified information this year. Data pertaining to the number of LES/NES pupils in bilingual programs and the number of pupils who have become bilingual and literate in English and in their primary language will not be collected. An official from the Office of Bilingual/Bicultural Education explained that before the legislation which included these specific requirements was passed, the data collection form had been printed. It was therefore decided that the forms already printed would be used for 1978-79. New forms incorporating the present requirements will be used for 1979-80.

Guidelines Needed Regarding
Use of Pupil Exit Criteria

Section 52164.5 of the Education Code requires school districts to report annually to SDE the number of LES/NES students who have ". . . become bilingual and literate in English and in their primary language, and the number of such pupils who have demonstrated adequate proficiency to be placed in mainstream classes." In order for the districts to report the required information, they need pupil reclassification and/or exit criteria.

Data concerning numbers of reclassified pupils were required with enactment of the 1976 legislation. A Department of Education memorandum sent on July 5, 1978 to county and district superintendents of schools stated that a pilot study had been conducted to examine basic assumptions underlying reclassification and to formulate tentative reclassification criteria. The memorandum indicated that the Department planned to provide specific reclassification guidelines by April 1979. The Department is presently establishing a committee to examine issues and to formulate possible recommendations on bilingual program reclassification criteria.

Until specific reclassification guidelines are established, SDE has provided interim directions to districts specifying the types of language proficiency assessment to be used for reclassifying pupils from the categories of LES/NES to fluent-English speaking. However, the Department's guidelines include no direction pertaining to the use of reclassification criteria in determining when pupils "have demonstrated adequate proficiency to be placed in mainstream classes." Without direction in this area, administrators at the local level are uncertain about the conditions under which pupils who have demonstrated adequate proficiency should remain in bilingual classes or return to the regular program.

It is also noteworthy that the federal Title VII Bilingual Education program requires school districts which receive funds to:

. . . provide measurable goals for determining when [limited-English speaking] children no longer need such assistance. . . if any child is enrolled in a bilingual program assisted under this title for two years, that child shall have an individual evaluation establishing the need for continued services.

This federal provision requires both the establishment of language reclassification criteria and their use in determining when pupils are ready to be transferred into the regular program.

Required Evaluation Procedures
and Resultant Difficulties

Section 52171 of the Education Code requires that each school district assess at the beginning and end of each school year pupil achievement in comprehending, speaking, reading and writing English and, to the extent assessment instruments are available, in the second language of instruction. Pupils are to be pre-tested in basic skills at the beginning of each school year and post-tested in basic skills at the end of each school year. At least annually districts are to submit to the Department of Education an evaluation report of pupil progress. This report is to identify variables, including other programs, which may have affected pupil achievement.

The majority of the school districts we visited were uncertain about what type of data they should report to fulfill the achievement testing requirement, since the Department of Education had not provided complete guidelines. Districts did not know whether they should collect data in raw scores, grade level equivalents, percentile ranking, or what specific reporting procedures would be required for various schools.

In a memorandum to county and district superintendents dated July 5, 1978, the Department stated that:

Bilingual test results of matched pre- and post-test scores for Spanish/English for 1978-79 are to be reported to the Department of Education pursuant to instructions to be issued in the future.

Although testing was required during the present school year, no instructions had been issued as of February 1, 1979. Without specific guidelines, districts are unaware of whether their data collecting methods will conform to procedures established by the Department.

School districts also questioned whether the data they were to report to the Department would provide useful information for such purposes as generating valid conclusions about program effectiveness. School districts are using a variety of testing instruments, only some of which are those recommended by the Department of Education. Because data from diverse instruments

may be of limited utility for aggregations or comparisons across districts, it is questionable whether the testing will provide a basis for evaluating program effectiveness.

To provide for achievement testing in the primary language, the Legislature in 1975-76 appropriated \$300,000 to the Department of Education for the development, standardization and implementation of a Spanish bilingual achievement test. The statutory deadline for the final product was originally June 30, 1976 but due to delays it was subsequently extended to June 1977. When the June deadline was not met, the Legislature directed the Department to complete test development no later than October 1, 1978 so that school districts could use this instrument. School districts were notified on September 1, 1978 of the availability of the test. However, the instruments had not been field tested as of February 1979.

For the 1978-79 school year, the Department recommended a number of Spanish achievement tests from three test suppliers.* Districts were allowed to use other instruments if the Department gave prior approval. Eight of the 17 districts we visited were not using one of the recommended tests, and five of the eight had not received prior approval from the State.

* The Department has decided that for 1978-79 only Spanish/English test scores are required.

School personnel questioned the need for annual pre- and post-testing. Although administrators of the bilingual programs in 13 of the 17 school districts we visited believed that achievement testing was necessary, 9 of the 17 felt that such testing should only be required once a year after the student's first year in a program.* Many administrators felt that annual testing should be required only in the spring on a continuing basis, with prior spring scores serving as a benchmark for measuring student progress.**

* Three of the 17 districts were identified as testing only once a year. Two of these had not received authorization from the Department of Education.

** Methodological limitations associated with using fall-to-spring gain scores as a measure of student progress also cast doubts about the utility of the present annual pre-and post-testing requirement. Year-to-year testing at one time is recommended by some evaluators as a method for assessing student progress.

Problems in SDE Implementation of
Census Audit Requirements

Section 52164.2 of the Education Code states that:

The Department of Education shall review the results of the census each year. Where the information provided by a school district appears to be inaccurate, the Department shall audit the district's census through an on-site visit. Where the census has been incorrectly taken, or the results appear to be inaccurate, the Department shall require another census to be taken and the corrected information to be provided.

Although this provision has been in effect since the 1977-78 school year, none of the districts reporting census data of questionable accuracy has been audited. In June 1978, the Office of Bilingual/Bicultural Education identified 19 school districts with large discrepancies between their 1975-76 census and their 1977-78 census data. However, there was confusion within SDE concerning which unit was responsible for performing census audits. In July it was agreed that the Elementary Education Program Management unit would do the review. However, as of January 25, 1979, census data had not been audited in any of the 19 school districts. As a result, it is impossible to determine whether such problems as under-counts or over-counts of pupils occurred. A second unit within the Department, the Elementary Compliance Review unit, indicated to us that it is currently reviewing data pertaining to the 19 districts and establishing census audit procedures for the present year.

Reasons for and Effects of
Identified Deficiencies

Two basic problems appear to account for the deficiencies identified related to implementation of bilingual education requirements. The first is that the responsibility for administering the program is diffused among various units within the Department. The 1976 legislation mandated that there be within the Department ". . . an administrative unit responsible for bilingual-bicultural educational programs and policies." (Education Code, Section 52177(4)).

The Office of Bilingual/Bicultural Education is the Department's administrative unit generally responsible for bilingual programs. However, several other units within the Department have related responsibilities. For example, the Office of Program Evaluation and Research is responsible for pupil assessment and program evaluation. Overall, at least 3 different units within the Department have separate responsibilities for carrying out specific mandates, yet these responsibilities are fragmented within SDE. Despite the fact that the Office of Bilingual/Bicultural Education is generally responsible for bilingual programs, they have no control over whether all requirements are fulfilled.

Other problems stem from inherent difficulties associated with executing specific statutory mandates. For example, implementation of a number of requirements poses complex problems simply as a result of limitations in "the state-of-the-art" such as lack of appropriate testing instruments.

The failure to fully implement statutory requirements has had a number of consequences: LES/NES pupils may not be consistently identified throughout the State. Also, reliable census information detailing the total number of LES/NES pupils, the numbers of such pupils participating in bilingual programs and their language achievement in bilingual programs may not be available. Without this information, it is difficult to allocate program funds among districts on an equitable basis or to effectively plan or evaluate state policies for limited-English speaking students.

CONCLUSION

There are several problems in the Department of Education's administration of the bilingual education program. These problems include the failure to issue complete guidelines to school districts and to execute responsibilities indicated by specific legislative mandates in a timely fashion. Consequently, there is

no assurance that LES/NES pupils will be identified on a consistent basis or that comparable information will be available for allocating funds among districts or for planning and evaluating programs statewide.

RECOMMENDATION

We recommend that the Department of Education establish specific procedures for carrying out fully its designated responsibilities to provide educational services to LES/NES pupils. The Department of Education should ensure coordination and delegation of authority among units for:

- Clarifying annual census requirements
- Auditing census data to ensure accuracy
- Establishing guidelines for the use of reclassification criteria to identify pupils who have become proficient in English and to place these pupils in regular classes
- Reviewing procedures for local-level evaluation and identifying needed improvements.

In view of problems cited during our fieldwork, we also suggest that the Department identify for the Legislature areas of the present bilingual education statutes related to pupil testing and assessment and district reporting of data which are not feasible for it to administer or which may not be cost-effective at the local level.

ADDITIONAL PERTINENT INFORMATION

ISSUES FOR LEGISLATIVE REVIEW

School districts identified a number of additional problems pertaining to the implementation of the State's bilingual education legislation. These problems relate to program goals, staffing requirements and mandates for inclusion of fluent-English pupils.

Program Goals: "Maintenance vs. Transitional"

Four school districts indicated uncertainty as to whether the State's bilingual education program is intended to be a "transitional program" or a "maintenance program." Districts commonly categorized bilingual education programs using these two terms to describe policies for the placement of pupils once they have become fluent in English.

A transitional program is typically one that uses the pupil's primary language principally to enable him to function adequately in the school and to facilitate his acquisition of English. Under this approach, when a student is able to function in a regular class instructed in English, efforts are generally begun to transfer him or her out of the bilingual class.

A maintenance program is generally one which sustains or builds competence in the native language as well as in English. Pupils who have developed the proficiency necessary to function in a regular class instructed in English typically remain in the bilingual program for some time.

Of the 17 districts reviewed, 7 indicated that they had transitional programs, 3 had maintenance programs, and 7 had both types of programs. Twelve of the school districts that provided information concerning placement of LES/NES students after they had become fluent in English reported the following:

- In six districts 50 percent or more of the students were transferred to a regular English speaking class, with no primary language follow-up
- In one district over 50 percent of the students were transferred to a regular English speaking class with some follow-up in the primary language
- In five districts 50 percent or more of the students remained in the bilingual class.

Present state legislation specifies that the purpose of the bilingual education program is:

To offer bilingual learning opportunities to each limited-English speaking pupil enrolled in the public schools and to provide adequate financial support to achieve such purpose.

Title VII of the federal Elementary and Secondary Education Act (as amended in 1978) states that the objective of the program:

. . . shall be to assist children of limited English proficiency to improve their English language skills.*

The State's 1972 legislation (which established a bilingual program for district participation on a voluntary basis) specified that:

The Legislature finds and declares that a primary goal of such programs is, as effectively and efficiently as possible, to develop in each child fluency in English so that he may then be enrolled in the regular program in which English is the language of instruction (Education Code Section 52100, repealed).

The State's present legislation has been interpreted by school districts in varying ways, leading to different policies for the placement of pupils once they have become fluent in English.

* An official from the federal Office of Bilingual Education indicated to us that no Title VII funds are to be used by school districts to support maintenance type programs.

Staffing Requirements

Eleven of the 17 districts we visited identified problems pertaining to the State's requirements for bilingual-crosscultural teachers in bilingual education programs. These problems related to two areas: the recruitment of qualified teachers and the process for obtaining waivers for employing new teachers who have not received bilingual-crosscultural certification.

Teacher Recruitment

Eight of the 17 districts stated that they were having problems obtaining certified bilingual-crosscultural teachers. This information confirms a report dated September 1, 1978, by the Commission for Teacher Preparation and Licensing. The report indicated that the supply of bilingual-crosscultural teachers prepared and otherwise certified in California will likely meet less than 40 percent of the needs for such teachers in 1978-79 and less than 60 percent of the 1979-80 need.

Teacher Waiver Process

Seven of the 17 districts expressed concern about the process for obtaining waivers of bilingual-crosscultural teacher requirements. Section 52178 of the Education Code states that when hiring new teachers for bilingual classes, the

bilingual-crosscultural requirements will not be waived unless the district has made a "good faith effort" to recruit and hire such teachers. This effort must have included contacting the bilingual-crosscultural teachers annually listed by the Commission for Teacher Preparation and Licensing and contacting and requesting assistance from the clearinghouse maintained by the Commission.

School districts were uncertain as to what constitutes a "good faith effort" to recruit and hire bilingual-crosscultural teachers. To understand their concern, it is necessary to review aspects of the waiver system. The Directory of Bilingual/Crosscultural Teachers maintained by the Commission for Teacher Preparation and Licensing lists teachers wishing to be notified of available positions by region--i.e., northern, central and southern California. It also lists teachers that want to be notified of available positions throughout the State. For southern California, over 800 listed teachers are certified in Spanish; for the entire State the number totals over 1,200.

Many of the districts contacted felt that before they could receive a waiver they had to contact every teacher on the list for a specific language. This meant that if a district needed a teacher certified in Spanish it would have to contact over 1,200 teachers, which could create a tremendous burden and

cost to the district. For example, one school district spent \$3,000 contacting all of the teachers listed as certified in Spanish and received only one response.

Mandate for Inclusion of Fluent-English Speaking Pupils

Federal and state requirements differ (although they do not necessarily conflict) concerning the composition of bilingual education classes. Title VII, the federal bilingual education grant program, states that not more than 40 percent of students enrolled in bilingual classes may be fluent-English speaking. Section 52167 of the state Education Code states that no more than two-thirds of students enrolled in bilingual classes may be LES/NES pupils.* Thus, while the State requires that a minimum of one-third of a bilingual class consist of fluent-English speaking pupils, the federal Title VII requirement sets a maximum limit of 40 percent fluent-English speaking pupils.**

* However, if LES/NES pupils comprise more than two-thirds of the total school enrollment, the code provides that the proportion of LES/NES students in bilingual classes may exceed the proportion of LES/NES pupils in the school by a maximum of ten percent.

** Under Federal "Lau" guidelines (which pertain to districts found to be out of compliance with the Supreme Court "Lau vs. Nichols" decision) districts are required to follow Emergency School Aid Act (ESAA) regulations and Title VI of the Civil Rights Act regulations in establishing bilingual classes. ESAA regulations allow the separation of minority and nonminority groups of children for 25 percent of school day classroom periods. A May 1970 Office of Civil Rights memorandum concerning Title VI of the Civil Rights Act specifies that any ability grouping or tracking system which is developed to deal with the special needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

Eight of the 17 districts we visited indicated problems in meeting the statutory requirement that at least one-third of pupils in bilingual classes be fluent-English speaking. Some of the districts stated they had problems obtaining approval from parents of fluent-English speaking pupils to place the students in bilingual classes. Some parents felt that the program would hinder pupils' learning. Other districts had a substantial population of transient students, and the number of required fluent-English speaking pupils needed to maintain the one-third ratio was constantly changing.

OTHER INFORMATION REQUESTED BY THE LEGISLATURE

Required Parental Notification

Section 52173 of the Education Code requires districts to notify by mail or in person the parents or guardian of a pupil who will be enrolled in a program of bilingual education. The notification is to contain certain descriptive information about the program (e.g., purposes, method and content) and to inform parents of the opportunity for parental participation in the program. All districts reviewed were in compliance with the parental notification requirement, although a few districts did not provide materials describing the opportunity for parental participation in bilingual programs.*

Average Number of Years
in Bilingual Program

Only a few districts were able to provide information pertaining to the average length of pupil enrollment in the bilingual education program. However, the data that were collected suggested that students tended to participate in bilingual programs on a fairly continuous basis throughout the primary grades, as indicated in Table 1.

* Our review considered compliance with parental notification requirements rather than the quality of such notification procedures.

TABLE 1

NUMBER OF YEARS STUDENTS PARTICIPATED
IN BILINGUAL EDUCATION PROGRAM BY GRADE LEVEL*

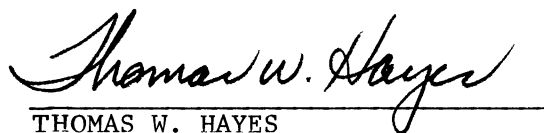
<u>Grade Level</u>	<u>Average Number of Years in Bilingual Class</u>
Kindergarten	1
First	1.58
Second	1.6
Third	3

* Data based on responses from five districts.

Overlap of Participation in
Bilingual Programs and
Compensatory Education Programs

Data available from districts concerning the participation of LES/NES pupils in other categorical programs were limited, with precise figures often unavailable. However, districts which did provide information identified overlap between pupils in bilingual programs and compensatory education programs. Of the eight districts responding, five stated that over 90 percent of the bilingual pupils also participated in compensatory education programs.

Respectfully submitted,


THOMAS W. HAYES
Acting Auditor General

Date: March 7, 1979

Staff: Dr. Joan S. Bissell, Supervising Auditor
Robert E. Christophel, Supervising Auditor
Dennis L. Sequeira
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STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION

STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

March 6, 1979

Mr. Thomas W. Hayes
Acting Auditor General
Joint Legislative Audit Committee
Office of the Auditor General
925 L Street, Suite 750
Sacramento, CA 95814

Dear Mr. Hayes:

This letter is written in response to the draft report prepared by your office on the recent review of the bilingual education program.

I would like to commend your staff for the cooperative manner in which they worked with our staff in conducting the review.

The following comments are in response to the problems presented in your report.

Item 1: Some local districts are confused concerning procedural requirements used as part of the annual census to identify limited and non-English speaking (LES/NES) pupils.

When the initial AB 1329 census requirement was effected in the Fall 1977, the procedures focused on a language dominance approach and a reporting due date of December 1st pursuant to statutory language. The Department developed an extensive training package, conducted 53 workshops throughout the state, trained over 7,000 people, and provided the census materials in the seven major languages represented in the LES/NES group.

AB 3470 was signed into law on September 18, 1978 and was to be effective September 15, 1978. The Department had very little time to develop procedures and related guidelines for districts to follow in conducting the 1978 census pursuant to AB 3470. In essence, AB 3470 now requires that the yearly census utilize an English proficiency approach and a reporting due date of April 30. The law also allows districts to utilize a census procedure approved by the Office of Civil Rights, and the Department has allowed districts to utilize under certain conditions an English proficiency instrument other than the four designated by the Superintendent.

Presently, the Department has instructed districts to conduct the 1978-79 census along the following three steps:

1. Identifying the primary language of each and every pupil in Grades K-12 by administering the Home Language Survey (HLS).
2. Determining limited and non-English speaking status of each and every pupil reporting a language other than English on the HLS by exercising one of three options, including the selection of a state designated instrument in one option.
3. Reporting the numbers of LES/NES students in each school district utilizing Parts 1 and 2 of the SDE Form R-30S.

The sudden and late change from a language dominance approach and a December 1 reporting due date to an English proficiency approach and an April 30 reporting due date as a result of the enactment of AB 3470, may have caused some confusion in the field.

Item 2: For 1978-79 the Department plans to collect census information via Form R-30S (School Report: Student Data Fall 1978) that is due April 30, 1979. The Form R-30S is divided into six parts as follows:

- Part I. Limited English speaking students: Primary language by grade levels.
- Part II. Non English speaking students: Primary language by grade levels.
- Part III. Participants in programs funded by Consolidated Application process, Duplicated Count.
 - program (funding source)
 - LES/NES/FES status
 - grade level
- Part IV. Participants in programs funded by Consolidated Application process, Unduplicated Count.
 - LES/NES/FES
 - grade level
- Part V. Staffing for programs funded under Consolidated Application process.
 - program (funding source)
 - language status
- Part VI Primary language of students in Consolidated Application programs, Unduplicated Count.

With the exception of collecting information re the age of LES/NES students, the Department shall collect the statutorily required census information for 1978-79. Modifications in the Form R-30S for 1979-80 are being planned to correct this exception.

In reviewing the 1977 census reports by districts and comparing said reports to previous census information, the Department identified nineteen (19) districts that had a differential of more than fifteen percent (15%) LES/NES count between census counts. An audit is presently being conducted of these districts.

Item 3. The Department has issued incomplete guidelines concerning annually required testing of students' achievement, and such testing as presently mandated has questionable utility.

The Department, through the Office of Program Evaluation and Research, issued two letters of instructions pursuant to delineating testing requirements for non and limited English speaking (LES/NES) students. The first, dated May 30, 1978, contained instructions regarding data requirements for the consolidated evaluation (e.g., E-127P Report), including specific information on testing and reporting achievement data on LES/NES students. The second letter of instructions was issued on October 17, 1978, referenced AB 1329 pre-posttest requirements, and contained a listing of tests to meet English and primary language requirements, as well as alternative procedures for meeting testing requirements. The criticism of "incomplete guidelines" (p.18) is thus unfounded.

Moreover, school districts are not required by law to use a single instrument designated by the state. The Office of Program Evaluation and Research has initiated an alternative instrument review process established to assist districts in fulfilling the primary language achievement testing requirements. Thus, the Auditor General's report that districts did not receive authorization from the Department for achievement testing variations (p. 19-20) is also unfounded. District request to use alternative procedures were acted upon when received.

It must be noted however that meeting present statutory testing requirements is problematic because of the: 1) state-of-the-art of English primary language tests; and 2) the limited capability of school districts to conduct and effectively utilize such data. There is only one commercial test which assesses "reading, writing, speaking, and comprehension," but it is still undergoing normative and psychometric revisions. Two other commercial tests exist, but these are limited as to academic skills which can be assessed and/or contain other age/grade, and psychometric limitations. Moreover, these tests are limited to English/Spanish, and appropriate tests in other languages are simply not available nor is there the "market" for commercial development.

Additionally, the capability of school districts to implement pre-posttesting in English and the pupil's primary language is difficult because of administrative difficulties, insufficient inservice training, testing costs, limited qualified personnel knowledgeable about testing, limited technical/computer access, and lack of integration with other program testing requirements.

With respect to recommended changes in the law affecting native language achievement testing of LES/NES pupils (p. 25), one desirable change would be to require districts to have an integrated evaluative achievement testing plan for the assessment of progress in the basic skills in English and the pupils' primary language and eliminate the requirement of reporting to the state, with the exception of data needed for state evaluation purposes.

An alternate change in the law would be to require the testing of reading, language and mathematics as sufficient for the evaluation of basic skills, as opposed to requiring speaking, writing, comprehending and reading as additional curriculum areas to be tested and reported to the state.

Legislative intent for an evaluation to assess pupil progress can be better implemented by the enabling of the Department to conduct evaluation studies on a sample basis of about 10-15 school districts with appropriate controls for programmatic treatments and significant pupil characteristics. While there is merit to the need for pre-posttesting in English and one's primary language, it is noted that grave difficulties exist and that present legislation should be modified to permit more meaningful data collection within existing constraints.

The references to the Spanish language achievement test (p. 19) are worthy of comment. The \$300,000 appropriation was to develop a Spanish language achievement test rather than a bilingual achievement test as stated. Furthermore the Legislature did not direct the Department to fully complete test development by October 1. It was understood that the field testing could only be done when students were in schools; namely, sometime during the 1978-79 school year. Furthermore, the last sentence of the paragraph is inaccurate. The fact is that field testing of the instrument had not been completed as of February 1979. The paragraph unnecessarily communicates a negative point of view toward the Department of Education's responsibilities regarding the development of the Spanish language achievement test.

Last, the testing reference in Appendix A creates the impression that all LES/NES pupils are subject to a horrendous parade of

testing requirements. This is not true. The Home Language Survey and individual assessment of English language proficiency are one-time-only for new district enrollees and kindergarten pupils. Individual assessment of English language proficiency data are used for placement in an appropriate program and for diagnosis of pupil learning needs; not for a baseline of achievement progress in the basic skills.

The "additional required testing" items imply that more testing on-top-of bilingual education testing is required. This is not true. Pre and posttesting (or annual testing) of pupils in EDY, ESEA Title I or ESEA Title VII programs in English reading and mathematics partially satisfies the "pre-testing annual" requirement for LES/NES pupils, although NES pupils are not tested in English. Furthermore, state law prohibits the Department from requiring that kindergarten pupils be pre and posttested for achievement reporting purposes.

Alternative instruments are available for assessing special education pupils in English language proficiency, and the Department has been reviewing requests to use alternative assessment procedures for LES/NES special education students. It may appear as if much testing is required for LES/NES pupils. As far as the statewide evaluation of bilingual program effectiveness is concerned, pre and posttest scores in the pupil's primary language have little or no interpretive value. Adequate achievement tests of speaking, writing, comprehending, and reading do not exist in languages other than English. Furthermore, the few tests that do exist are not compatible and, consequently, an aggregation of scores results would present a myriad of technical data problems. It is indeed questionable whether primary language achievement test data could be used for statewide evaluative purposes.

However, it does make good sense to assess pupil progress in the languages of instruction for judging local program effectiveness within the constraints of the bilingual instructional plan of a district. It would seem essential for a school district to maintain at least an annual testing procedure for NES/LES pupils in bilingual programs.

It is more efficient to use the census testing data, English language proficiency in oral language development, for diagnosis and placement in coordination with annual evaluative achievement testing data in English and the primary language of instruction within a bilingual program. It is not more efficient for the state to collect these data from districts considering the unfeasibility of using the data.

Item 4. The Department has not directed local districts concerning procedures for determining when pupils are ready to be transferred into the regular program (i.e., "exit criteria").

The Department, through the Office of Bilingual Bicultural Education (OBBE), issued provisional directions to school districts regarding "exit criteria." The first memorandum of July 5, 1978 contained specific recommendations which were reiterated in another memorandum dated September 30, 1978. Additionally, the Department has conducted a pilot study regarding the assumptions underlying entry/exit criteria. At present the Department has convened a committee of educators and researchers to deliberate on entry/exit criteria and is expected to submit its report to the Department in mid-April, 1979.

Preliminary committee indications are that it is critical for the Department to undertake several empirical studies related to developing equivalency tables of language proficiency tests and studies related to ascertaining the relationship of language proficiency to achievement (i.e., reading, writing, speaking and comprehension).

The concept of "exit criteria" is new to state and federal bilingual programs, the research community as well as educators. The paucity of research coupled with wide variation in achievement proficiency requirements, if any, make development of exit criteria difficult. Given the programmatic and policy implications, the Legislature is advised to modify the immediate requirement to establish entry/exit criteria for one year to permit the necessary studies to be conducted in order to allow for a more reasonable formulation of criteria that is adequate and meaningful.

Item 5. Some school districts are confused concerning the objectives of the state's present bilingual education program; of particular concern is the extent to which the program is intended to emphasize "maintenance" of pupils' primary language as opposed to "transition" into complete classroom functioning in English.

The Department has consistently advised the field about the programmatic requirements for LES/NES students, namely, that minimally a bilingual individual learning program (type f) must be provided each LES/NES student in Grades K-12, and that a partial bilingual program, full bilingual program, or a bilingual bicultural program (type a,b,c)* must be provided in Grades K-6 at a school when there are ten or more LES/NES students of the same primary language per grade level and the school is in receipt of certain monies. This implies that a linguistically comprehensive program must be provided an LES/NES student until said student is judged ready to participate in a regular English program.

*See Education Code. Type of Bilingual programs are specifically noted in sections of the Education Code.

As such, the emphasis is on a "transitional" program.

Item 6. Local districts are having difficulties in meeting present requirements for use of certified bilingual crosscultural teachers in bilingual education programs.

Presently, state mandates require that all a,b,c type bilingual programs in Grades K-6 be staffed by teachers with a bilingual credential or by regularly credentialed teachers who 1) have a certificate of bilingual competence, or 2) for whom a waiver has been requested.

In order to obtain a waiver for a teacher, a district is required to show a "good faith" effort in recruiting and hiring teachers with bilingual credentials, including contacting those persons listed in the clearinghouse list maintained by the Commission for Teacher Preparation and Licensing (CTPL).

Indications are that the clearinghouse list is being used and that districts are pursuing "good faith" efforts.

CTPL and the Department submitted reports in October and November 1978 respectively that dealt with the "demand and supply" for bilingual credentialed teachers and suggestions for meeting that demand-supply.

The CTPL report advised that 13,000 to 17,000 bilingual credentialed teachers may be needed by 1980 depending on staffing patterns. As of February 1, 1979, CTPL advises that there are presently 4,643 teachers with bilingual credentials, and 2,559 with certificate of bilingual competence. The report by the Department includes some suggestions for a long-range solution to the discrepancy between the "demand and supply." The Department shall continue to work with the other agencies in the Task Force established pursuant to the Supplementary Language in the Budget Act toward clearer resolution of the discrepancy.

Item 7. Schools are experiencing problems in meeting the requirements that at least one-third of pupils in bilingual classes be fluent English speaking.

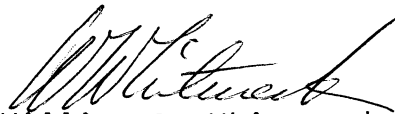
The state requirements for two-thirds limited and non-English speaking students (LES/NES) and one-third fluent English speaking students (FES) in an a,b,c type program is consistent with interpretations by the Office of Civil Rights (OCR) to prohibit segregation of students in state bilingual programs.

The choice for both LES/NES students to participate in a,b,c type programs is a parent choice. Hopefully, the goals and options in a bilingual program are clearly stated so that parents can make the proper choice. To the extent that educators can clarify the goals, curricular options, and promote the potential for advantages of proficiency in two languages for FES students, to that extent the one-third FES requirement will be more easily fulfilled.

The Department plans to explore whether this is a general difficulty or something unique to a language group--Spanish, Cantonese, Portuguese, etc. Additional study on practices by which to fulfill this requirement on a multigrade - team teaching or magnet school models is also necessary.

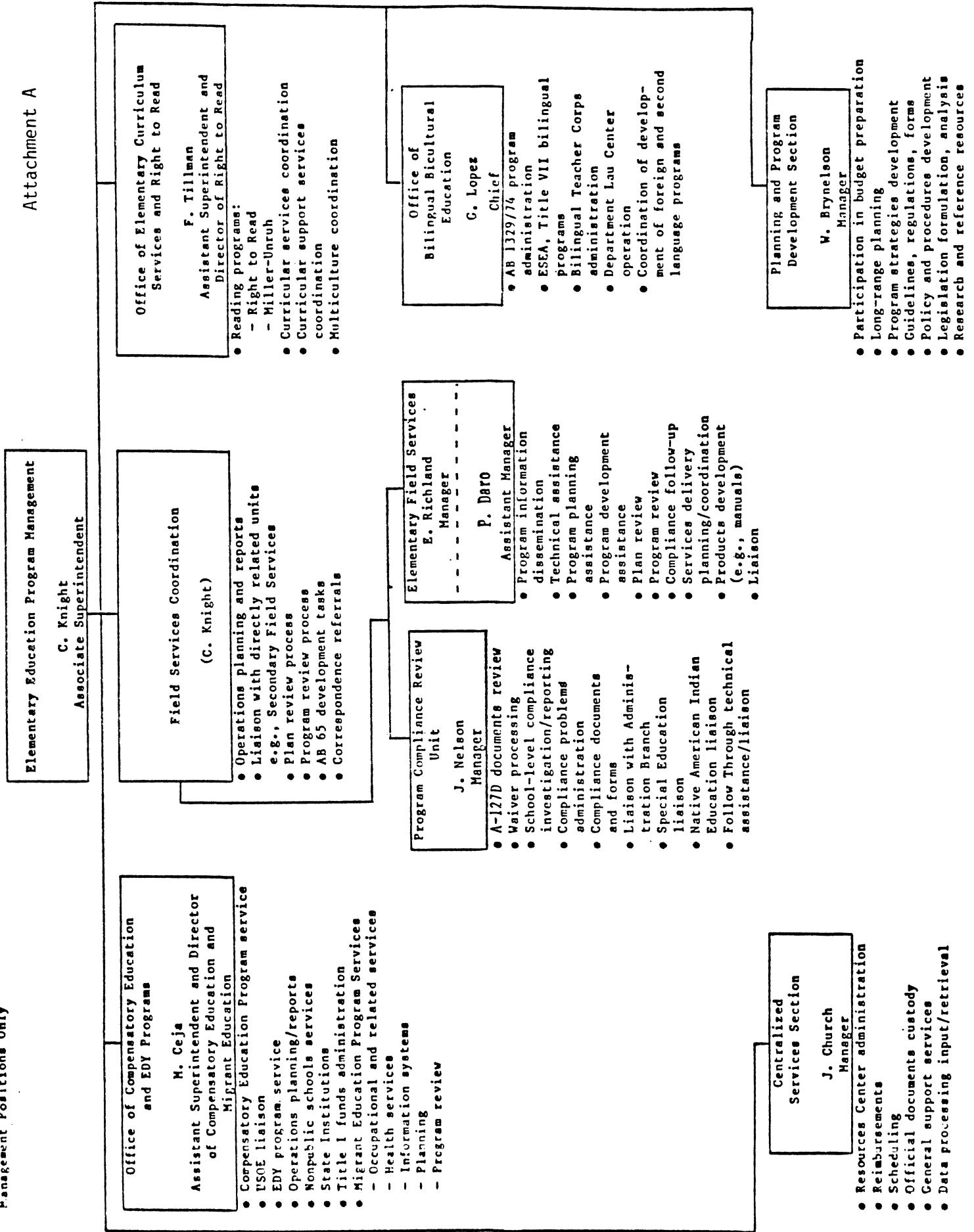
As to the recommendation that the Department establish specific procedures for carrying-out its designated responsibilities to provide educational services to LES/NES pupils and to ensure coordination and delegation among units for said responsibilities, the Department has made some organizational changes that should ensure more efficient conduct of its responsibilities.*

Sincerely,



William D. Whiteneck
Deputy Superintendent for Administration
(916) 445-8950

*See Attachment A



AUDITOR GENERAL COMMENTS
CONCERNING DEPARTMENT OF EDUCATION RESPONSE

In its response, the Department of Education took exception to four aspects of the Auditor General report. Each of the Department's objections appears to reflect a misunderstanding of material contained in the Auditor General report.

First, the Department indicated that "the criticism of 'incomplete guidelines' [pertaining to annual pre- and post-testing] is ... unfounded" (page 3). As pointed out by the Department, complete guidelines have been issued for all schools subject to the requirement of the consolidated evaluation of categorical programs. However, pre- and post-testing of achievement for limited and non-English speaking (LES/NES) pupils is required even among schools that do not receive categorical funding under the consolidated application. It is this latter group of schools for which guidelines are incomplete.

The Department also referred to as unfounded the statement that districts did not receive authorization for achievement testing variations (page 3). The Department indicated that "District requests to use alternative testing procedures were acted upon when received". However, the districts cited as not having approval for alternative instruments had not submitted to the Department a request for use of such procedures.

The Department further cited as inaccurate the statement that the \$300,000 Spanish language achievement test had not been field tested as of February 1979. The Department stated that field testing of the instrument had not been completed as of February 1979. This is the meaning the Auditor General statement was intended to convey. The Department further expressed concern that the report section communicates "a negative point of view" concerning the Department's responsibilities regarding the test. The intent of the section is simply to describe past legislative action regarding the test and the present status of test development.

Finally, the Department expressed concern that the chart in the Appendix "creates the impression that all LES/NES pupils are subject to a horrendous parade of testing requirements" and "this is not true". The purpose of the diagram is to assist readers who are not familiar with present testing and evaluation requirements to understand these requirements and their inter-relationships. The report did not attempt to render a judgment about whether such requirements are excessive.

APPENDIX A

The chart on page A-2 displays the pupil assessment and annual evaluation requirements applying to LES/NES pupils. It also lists other testing and evaluation procedures which schools and districts typically are required to conduct and which may include LES/NES pupils.

ASSESSMENT/TESTING OF LES/NES PUPILS

Home Language Survey (all pupils in State)

If primary language is other than English:

Individual assessment of pupils' English language proficiency in four areas: comprehension, speaking, reading and writing. If pupil is determined to be LES/NES, he/she is to be provided instruction in a bilingual program or under specified conditions in an "individual learning program";

Pre-testing annually during the beginning of the school year (including competencies for speaking, reading and writing) on an achievement test in English and, to the extent testing instruments are available, in the primary language

Post-testing annually during the end of the school year on achievement tests to determine proficiency of all pupils in mainstream classes

Required Under Bilingual Education Legislation

Additional required testing is as follows:

Statewide achievement testing of all pupils in grades 3, 6, and 12

Proficiency testing to determine if students meet proficiency standards for grades 6 and 8 and graduation requirements for grade 12

Pre- and post-testing (or annual testing) of pupils in other state and federal categorically funded education programs (e.g., compensatory education)

Individual assessment of all pupils in special education programs for handicapped pupils

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Democratic/Republican Caucus
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