September 9, 2016

The Honorable John King, Secretary
U.S. Department of Education
400 Maryland Avenue
Washington, DC 20202

Re: Notice of Proposed Rulemaking (Docket ID ED-2016-OESE-0047)

Dear Secretary King:

On behalf of the nineteen school districts comprising the Large Countywide and Suburban District Consortium (the Consortium), we are writing in response to the U.S. Department of Education's July 11, 2016 notice of proposed rulemaking regarding the innovative assessment and accountability demonstration authority created by Section 1204 of the Every Student Succeeds Act (ESSA).

The Consortium advocated for the inclusion of an assessment pilot during the Elementary and Secondary Education Act (ESEA) reauthorization process because our members believe we can significantly improve on the traditional approach to statewide assessments. We recommended in a January 28, 2015 letter to Congress:

> "[T]he reauthorized ESEA should encourage states, in partnership with leading districts that have the capacity for better systems of assessment and accountability, to develop and pilot . . . systems [that] will, above all else, demonstrate a step forward in the use of high-quality assessments that improve instruction and yield timely, relevant, and actionable information for students, parents, educators, and school leaders."

The Department's proposed regulations seek to balance two important goals: (1) providing sufficient flexibility in the pilot for participating states and districts to truly innovate, and (2) establishing sufficient federal "guardrails" to ensure that the pilots produce high-quality assessments that yield valid, reliable, and comparable results. In the recommendations that follow, we have identified a few ways the Department can strengthen the regulations and strike a more appropriate balance between these two goals.

We appreciate the opportunity to provide our input and local perspective to the Department. We would be happy to provide any further information or additional assistance as appropriate.

Sincerely,

Justin (Tim) Mills, Chair
Bellevue School District, WA

Aaron Spence, Vice-Chair
Virginia Beach City Public Schools, VA

S. Dallas Dance, Past Chair
Baltimore County Public Schools, MD

Established in 2012, the Large Countywide and Suburban District Consortium is an invitational, self-funded network of some of the nation's most highly-regarded districts and leaders, all of whom are committed to advancing systemic education improvement and innovation in policy and practice to benefit *all* students as they prepare for success in college, career, and civic engagement. Our 19 districts span 13 states from Washington to Florida, include 8 of the largest 25 school districts in the nation, enroll an average of 90,000 students, and educate a total of 1.8 million students. Our growing and increasingly diverse student bodies reflect communities across America: 58% are students of color and 43% qualify for free or reduced-cost lunch.

Members include: Arlington Public Schools (VA), Baltimore County Public Schools (MD), Beaverton School District (OR), Bellevue School District (WA), Charlotte-Mecklenburg Schools (NC), Cobb County School District (GA), Fairfax County Public Schools (VA), Fulton County Schools (GA), Garland Independent School District (TX), Greenville County Schools (SC), Gwinnett County Public Schools (GA), Knox County Schools (TN), Mesa Public Schools (AZ), Montgomery County Public Schools (MD), Poway Unified School District (CA), School District U-46 (IL), The School District of Palm Beach County (FL), Virginia Beach City Public Schools (VA), Wake County Public School System (NC).

RECOMMENDATIONS

1. **Recommendation: Revise § 200.76(b)(1) to clarify that participating states are not required to use the innovative assessment system for purposes of accountability at the beginning of the demonstration authority. Rather, states may wait until the assessments are ready for use in accountability determinations and able to pass federal peer review.**

   Commentary: ESSA Section 1204(h) explicitly provides that participating states have the option to use the innovative system for accountability purposes during the demonstration period: "A State **may**, during the State's approved demonstration authority period of 2-year extension, include results from the innovative assessment systems…in accountability determinations…instead of, or in addition to, results from the assessment system under section 1111(b)(2)…" (emphasis added). Proposed regulation § 200.76(b)(1), however, replaces ESSA's "may" with a requirement that participating states "must" use the innovative system for accountability "in each year of the demonstration authority period."

   Our recommendation would not only adhere to ESSA's plain language, but it would also better support the purpose of the pilot. Although there may be a few states (e.g., New Hampshire) that have already been developing, testing, and improving innovative assessment systems long enough to use them for accountability purposes from the beginning of the demonstration period, most states interested in the pilot have not. The Department should encourage states to apply for the demonstration authority, including by providing states with more flexibility about when to start including results of innovative assessments in accountability determinations. This flexibility will allow states to ensure their new systems meet the required quality criteria before adding the results into their accountability determinations. Finally, requiring high stakes use from the very beginning may in practice frustrate the very purpose of Section 1204 by discouraging states from truly innovating in the name of higher-quality assessments, since designing more innovative approaches may take more time.

2. **Recommendation: Revise § 200.80(c)(2) such that the Secretary can grant waivers to states for the "time necessary" to transition to statewide use of the innovative system.**

   Commentary: ESSA Section 1204(j)(3) provides the Secretary with the authority to grant waivers to states that have not transitioned to statewide use by the end of the demonstration authority and any two-year extension. Under the statute, the Secretary can grant the states with the "time necessary" to achieve statewide use. However, the proposed regulations cap this waiver authority at one year. We urge the Department to instead mirror ESSA's "time necessary" approach for two reasons. First, the Department should, to the extent practicable, avoid one-size-fits-all approaches to implementing this pilot program. States will start at different places in their assessment system design; pursue innovations of varying ambition and scope; and implement in contexts that could vary from other participating states in several significant ways. In the face of such variation, the Department should not apply a standard one-year rule to these waivers. Second, if the Department agrees with our first recommendation in this letter about when on the front end states must begin using innovative assessments for accountability, then there will be even greater need for variation in the length of waiver on the back end. This revision will allow each state to responsibly transition to statewide use.

3. **Recommendation: Revise §§ 200.76(b)(2) and 200.77(b) to clarify that innovative assessments developed under the demonstration authority may include items above or below a student's grade level, provided the assessment measures the student's grade-level proficiency.**

   Commentary: ESSA Section 1111(b)(2)(J) allows states to use computer-adaptive assessments that include items above or below a student's grade level without seeking innovative assessment demonstration authority. The proposed regulations should clarify that measuring performance above and below grade

level is an approach that can also be used in innovative assessment pilots. Further, the regulations should state that, in pilot states, this approach can also be used in assessments that are not delivered via computer adaptive formats. It would be incongruous if states could not pursue an innovative approach through the pilot that ESSA allows all states to pursue through their traditional statewide assessment. Further, pilot states should be able to design non-digital assessments that also take advantage of this innovative approach to using items from different grade levels to better assess students' progress and growth.

4. **Recommendation: Revise §§ 200.77(b)(6), 200.79(b)(4)(ii), and 200.80(b)(ii) to clarify that the pilot must assess students at a rate equal to or greater than the state's participation rate in the traditional statewide assessment system.**

   Commentary: In ESSA, Congress maintained the federal requirement that states assess at least 95 percent of all students and students in particular subgroups. Under ESSA Section 1111(c)(4)(E)(iii), states must decide how to factor this participation rate requirement into their accountability systems. For the assessment pilot, however, Congress chose not to apply this same 95 percent rule. Rather, ESSA Section 1204 repeatedly applies a "not less than" rule whereby a state must assess under the innovative system an equal or greater percentage of students as the state does under its traditional statewide assessment system. Because the schools in the pilot are subject to the same state-designed consequences for assessing less than 95 percent of their students as any other school in their state, Congress chose not to add *additional* consequences for assessing less than 95 percent within the pilot that could jeopardize the state's demonstration authority. Instead, Congress created a related rule that ensures the pilot must at least track the state's non-pilot participation rates. Accordingly, the Department's regulations should not substitute the 95 percent rule that Congress chose for the statewide accountability system—and that applies to all schools in a state, whether in or out of the pilot—for the "not less than" approach that Congress chose as a potential reason to withdraw the demonstration authority.

5. **Recommendation: Revise § 200.80(b)(ii)(E) to clarify that comparability requirements do not prevent innovative assessment systems from covering *more* content, being *more* difficult, and/or being of *higher* quality than the statewide assessments.**

   Commentary: In general, the Department's approach to the complicated question of comparability is commendable. By providing several options and inviting states to propose their own test for comparability, the proposed regulations create the space needed for states to innovate. However, § 200.80(b)(ii)(E) authorizes the Secretary to withdraw a state's demonstration authority, if the state cannot show that the innovative system "demonstrates comparability to the statewide assessments…in content coverage, difficulty, and quality." Because the regulations do not define comparability in this context, the proposed language could be interpreted as a requirement that the innovative systems be equal to (and not better than) the traditional assessments in these three ways. We believe one of the main reasons for establishing these pilots is to encourage states and districts to develop *better* systems of assessment. The Department must therefore help ensure these systems have no artificial ceiling placed on their content coverage, rigor, or design.