

MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) Regular Session

Bill No. 162 (COR)

Introduced by:
As substituted by the
Committee on Education and Housing

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AN ACT TO ADD NEW ITEMS 11, 12, 13, AND 14, TO 1GCA §715; TO AMEND 5 GCA §1302; TO AMEND 5 GCA §1303; TO AMEND 5GCA §3101; TO AMEND 5 GCA §3107; TO AMEND GCA §4109; TO AMEND 5 GCA §22203; TO ADD NEW §7116 TO 7 GCA; TO ADD NEW §1116 TO 19 GCA; TO AMEND §11307 OF 7 GCA; TO ADD NEW §12108.1 to 7 GCA; TO ADD NEW §26603.1 to 7 GCA; TO AMEND 17 GCA § 3103 (j); TO AMEND 17 GCA §3112(a) 14; TO ADD NEW §3210 TO 17 GCA; TO ADD NEW §15136 TO 20 GCA PART 4; TO ENACT EVERY CHILD IS ENTITLED TO AN ADEQUATE PUBLIC EDUCATION ACT

BE IT ENACTED BY THE PEOPLE OF GUAM:

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- 17 Section 17. Amends 17 GCA § 3103 (j), Duties of the Superintendent.

1 Section 18. Amends 17 GCA §3112(a) 14, Duties and Responsibilities of the Guam
2 Education Policy Board.

3 Section 19. Adds new §3210 to 17 GCA, Construction with Other Laws.

4 Section 20. Transitional provisions and effective dates.

5 Section 21. Adds new §15136 is added to 20 GCA part 4, Every child entitled to an
6 adequate public education.

7
8 **Section 1. Short title. This act may be cited as the Every Child is Entitled to**
9 **an Adequate Public Education Act.**

10 **Section 2. Declaration of Policy.** *I Liheslaturan* declares that the education of
11 our children is the top priority of our government. The resources of the government must
12 first be directed toward providing an adequate public educational system.

13 **Section 3. Statement of legislative findings and purpose.** The legislature finds
14 that the Organic Act requires the government of Guam to provide an adequate system of
15 public education. The Organic Act Bill of Rights mandates compulsory education for
16 children between six (6) and sixteen (16). The interplay of these provisions creates a right
17 to an adequate public education for children that is analogous to a constitutional civil
18 right.

19 This act recognizes that civil right and gives school children access to the courts
20 to vindicate that right with the parent of a child empowered to conduct litigation on
21 behalf of the child.

22 While the term adequate public education is not easily defined, the legislature
23 finds that a working definition dealing with the physical aspects of the educational
24 process is necessary to secure and protect at least the minimal right of children to an
25 adequate education and to the end has defined that term.

26 Since the Organic Act assigns the responsibility of providing an adequate public
27 educational system to the entire government and all government officials, the scope of the
28 act is government-wide.

29 **Section 4. Definitions. New items 11, 12, 13, and 14 are added to 1 GCA §715**
30 **to read:**

31 Words and Terms Defined: Significance of Words.

32 11. *Adequate public educational system* means a system of public schools that
33 provides an adequate public education to public school students.

1 12. *Adequate public education* means public schools which at the minimum
2 provide:

- 3 a) a certified teacher for every class in a ratio established by relevant
4 collective bargaining agreements,
- 5 b) certified professional administrators
- 6 c) a certified guidance counselor for each school
- 7 d) a certified school health counselor for every school
- 8 e) properly ventilated classrooms in which the sensible air temperature is
9 no greater than 78° F.,
- 10 f) a supply of potable water sufficient to provide each student a daily
11 ration of drinking and washing water,
- 12 g) a reliable source of electricity
- 13 h) proper sanitation to include flushable toilets, clean restrooms, dining
14 areas and classrooms,
- 15 i) adopted textbooks and workbooks issued to each public school student
16 for the classes in which he or she is enrolled,
- 17 j) libraries, which meet the standards of the American Association of
18 School Librarians, at each school, operated by certified librarians
- 19 k) a healthful, safe, sanitary learning environment
- 20 l) at least 180 instructional days each school year with school years
21 ending no later than June 10.
- 22 m) regular, timely transportation to and from the school for his attendance
23 area as established by 17 GCA §6102 for every child in accordance with
24 policies adopted by the Education Policy Board.

25 13. In 12., above, *certified* means that a person holds at least a Professional I
26 certificate issued in accordance with standards at least as stringent as those in place on
27 the day this act is effective, for the position he or she holds.

28 14. *Public school* means a facility established, maintained or operated pursuant
29 §29(b) of the Organic Act, as amended.

1 15. *Public school student* means a child who is required to attend school by
2 Section 1421b. (r) of the Organic Act or 17 GCA §6102 who is enrolled in a public
3 school and has not been expelled.

4
5 **Section 5. Duties and Responsibilities of BBMR. 5 GCA §1302 is amended to**
6 **read:**

7 § 1302. Duties and Responsibilities of the Bureau.

8 In addition to the duties and responsibilities prescribed for the Bureau by any
9 other provision of law, the Bureau shall also have the following duties and
10 responsibilities:

11 **(a)** Conduct necessary operational planning and management research and studies
12 to ensure that effective planning and management methods are utilized by departments
13 and agencies of the government of Guam and otherwise to ensure that each public school
14 student receives an adequate public education;

15 **(b)** Subject to the approval of the Governor, prescribe a budget calendar for the
16 guidance of all executive agencies and a system of quarterly allotments to insure that
17 appropriations and non-appropriated funds are not exhausted beyond the fiscal period for
18 which such appropriations and funds are made available; provided that such budget
19 calendar and quarterly allotments are calculated so as to ensure that every public school
20 student receives an adequate public education;

21 **(c)** To institute a system of form control; and

22 **(d)** Perform such other duties and responsibilities as may be prescribed by the
23 Governor or by law.

24 **Section 6. 5 GCA §1303 is amended to read:**

25 § 1303. Management of Allotments.

26 In the release of monthly or quarterly allotments by the Bureau of Budget &
27 Management Research from appropriation acts, the Director thereof shall base such
28 allotments on anticipated cash receipts so that the obligations incurred pursuant to such
29 release of periodic allotments shall have sufficient cash for their payment-, provided that
30 no cash may be released until sufficient cash has been released to the Guam Public
31 School System to provide an adequate public education to every public school student.

1 **Section 7. Department of Administration. 5GCA §3101 is amended to read:**

2 § 3101. Department of Administration.

3 There is within the Executive Branch of the government of Guam a Department
4 of Administration. The Director of Administration is the head of the Department of
5 Administration. The Director of Administration is appointed by the Governor with the
6 advice and consent of the Legislature. It is the duty of the Director of Administration to
7 support an adequate public educational system as required by Section 29(b) of the
8 Organic Act, as amended.

9 **Section 8. Guam Public School System. 5 GCA §3107 is amended to read:**

10 § 3107. ~~Department of Education.~~ Guam Public School System.

11 There is within the Executive Branch of the government of Guam a ~~Department~~
12 ~~of Education.~~ Guam Public School System. ~~The Director of Education is head of the~~
13 ~~Department of Education. The Director of Education is appointed by the Territorial~~
14 ~~Board of Education with the approval of the Governor and with the advice and consent of~~
15 ~~the Legislature.~~ It is the mission of the Guam Public School System and the duty of all
16 public officials of the executive branch of the government of Guam to provide an
17 adequate public educational system as required by Section 29(b) of the Organic Act, as
18 amended, and to that end provide an adequate public education for all public school
19 students as those terms are defined at 1 GCA §715.

20 **Section 9. Program Execution. 5 GCA §4109 is amended to read:**

21 § 4109. Program Execution.

22 **(a)** Except as limited by policy decisions of the Governor, appropriations by the
23 Legislature, and other provisions of law, the territorial agencies shall have full authority
24 for administering their program service assignments, and shall be responsible for their
25 proper management, provided that the governor's policy decisions shall not limit the
26 authority of the Guam Public School System.

27 **(b)** Each territorial agency, (other than the Legislature and the courts), shall
28 prepare an annual plan for the operation of each of its assigned programs. The operations
29 plan shall be prepared in the form and content and be transmitted on the date prescribed
30 by the Bureau of Budget and Management Research.

31 **(c)** The Bureau of Budget and Management Research shall:

1 (1) Review each operations plan to determine that it is consistent with the
2 policy decisions of the Governor and appropriations by the Legislature, that it reflects
3 proper planning and efficient management methods, that appropriations have been made
4 for the planned purpose and will not be exhausted before the end of the fiscal year.

5 (2) Approve the operations plan if satisfied that it meets the requirements
6 under Paragraph (1). Otherwise the Bureau of Budget and Management Research shall
7 require revision of the operations plan in whole or in part.

8 (3) Modify or withhold the planned expenditures at any time during the
9 appropriation period if the Bureau of Budget and Management Research finds that such
10 expenditures are greater than those necessary to execute the programs at the level
11 authorized by the Governor and the Legislature, or that the receipts and surpluses will be
12 insufficient to meet the authorized expenditure levels, provided that no planned
13 expenditures necessary to provide every public school student an adequate public
14 education shall be modified or withheld.

15 (d) No territorial agency (except the Legislature and the courts), may increase the
16 salaries of its employees, employ additional employees or expend money or incur any
17 obligations except in accordance with law and with a properly approved operations plan.

18 (e) The Bureau of Budget and Management Research shall report quarterly to the
19 Governor and the Legislature on the operations of each territorial agency, relating actual
20 accomplishments to those planned, and modifying, if necessary, the operations plan of
21 any agency for the balance of the fiscal year.

22 **Section 10. Duties of Director of Administration. 5 GCA §22203 is amended**
23 **to read:**

24 § 22203. Duties of Director.

25 The Director shall, with due regard for the function of the specific agencies
26 concerned, organize and operate the accounting system on a fund basis with a self-
27 balancing set of accounts, recording cash and/or other resources together with all related
28 liabilities, obligations, reserves and equities which are segregated for the purpose of
29 carrying on specific activities or attaining certain objectives; establish an accounting
30 system which provides budgetary control over general governmental revenues and
31 expenditures; determine fairly and with full disclosure the financial position and results

1 of financial operations; show that all applicable legal provisions have been complied
2 with; establish various types of funds as are necessary and as required by law; shall
3 account in the General Fund all financial transactions not properly accounted for in
4 another fund; shall account in the Special Revenue Funds all proceeds of specific revenue
5 sources or to finance specific activities as required by law; shall account in the capital
6 improvements funds all receipts and disbursements of monies used for the acquisition of
7 capital facilities; shall account in other funds consistent with legal and operating
8 requirements; classify accounts to insure compliance with budgetary provisions; provide
9 a basis for financial and administrative control, furnish data required for financial
10 statements and provide a basis for comparison with similar data for other periods, etc.;
11 establish standards, procedures and techniques for a central accounting system; conduct a
12 continuing review of all accounting operations to effect improvements in accordance with
13 current accounting practices; establish standards for the preparation of financial
14 statements and other reports as are necessary; maintain all Federal grant award funds
15 including maintenance of encumbrance and expenditure; and obtain reports from all
16 departments and agencies as are required for the effective administration of a central
17 accounting system and take all actions necessary to ensure that an adequate public
18 education is available to every public school student.

19 **Section 11. Expedited Schedule of Discovery. A new §7116 is added to**
20 **7 GCA to read:**

21 § 7116. Expedited Schedule of Discovery.

22 At the first hearing before the Superior Court in any action brought under this
23 Chapter, the court may order an expedited schedule of discovery and pleading, and an
24 expedited schedule and trial date for the case, if requested by any party.

25 **Section 12. Limitation of Actions. §11311 of 7 GCA is amended to read:**

26 § 11311. Within Six (6) Months.

27 An action against an officer, or officer de facto:

28 (1) to recover any goods, wares, merchandise or other property seized by such
29 officer in his official capacity as tax collector, or to recover the price or value of any
30 goods, wares, merchandise or other personal property so seized, or for damages for the
31 seizure, detention, sale of or injury to any goods, wares, merchandise or other personal

1 property seized, or for damages done to any person or property in making any such
2 seizure;

3 (2) to recover stock sold for a delinquent assessment, as provided in [339 of the
4 Civil Code];

5 (3) to set aside or invalidate any action taken or performed by a majority of the
6 trustees of any corporation heretofore or hereafter dissolved by operation of law,
7 including the revivor of any such corporation.

8 (4) to bring an action upon a claim by a public school student for denial of an
9 adequate public education.

10 **Section 13. Standing to Sue. A new §12108.1 is added to 7 GCA to read:**

11 §12108.1. Public school student: Standing to sue. A public school student shall
12 have a claim and standing to sue the government of Guam and any officer of the
13 Executive Branch of the government of Guam in his official capacity only for the purpose
14 of enjoining such officer from failing to provide an adequate public education to that
15 public school student but not for money damages.

16 **Section 14. Attorney's fees. A new section 26603.1 is added to 7 GCA to read:**

17 §26603.1. In any action or proceeding to enforce a provision of this Act, the court,
18 in its discretion, may allow the prevailing party reasonable attorney's fee as part of the
19 costs.

20 **Section 15. Minors May Sue. A new §1116 is added to 19 GCA to read:**

21 § 1116. Minors May Sue.

22 (a) Except as otherwise provided by subsection (b), A minor may enforce his
23 rights by civil action or other legal proceedings, in the same manner as a person of full
24 age, except that a guardian must conduct the same.

25 (b) A parent of a public school student may conduct a civil action for injunctive relief,
26 mandate, prohibition or other legal remedy but not money damages on behalf of the
27 public school student to secure or maintain the public school student's right to an
28 adequate public education.

1 **Section 16. Attorney’s fees.** A new section 26603.1 is added to 7 GCA to read:
2 §26603.1. In any action or proceeding to enforce a provision of this Act, the court,
3 in its discretion, may allow the prevailing party reasonable attorney's fee as part of the
4 costs.

5 **Section 17. Duties of the Superintendent. 17 GCA§ 3103 (j) is amended to**
6 **read:**

7 (j) to perform other duties as may be required by public law to provide an
8 adequate public educational system; and

9 **Section 18. Duties and Responsibilities of the Guam Education Policy Board.**
10 **17 GCA §3112(a) 14 is amended to read:**

11 (14) perform other duties and responsibilities as required by public law to provide
12 an adequate public educational system; and

13 **Section 19. Construction with Other Laws. A new §3210 is added to 17 GCA**
14 **to read:**

15 §3210. Construction with Other Laws.

16 Insofar as the provisions of the **Every Child is Entitled to an Adequate Public**
17 **Education Act of 2003**.are inconsistent with the provisions of any other law, the
18 provisions of this Act shall be controlling; and in particular but not by way of limitation,
19 except as may be provided in this Act, no provision of any law, shall be applicable to the
20 government of Guam with respect to the provisions of the Adequate Public Education
21 Act of 2003 unless the Legislature shall specifically so state.

22 **Section 20. Transitional provisions and effective dates.** §10 shall be effective
23 thirty (30) days after enactment. §§ 5, 6, 7, 8 and 9 shall be effective October 1, 2004.
24 §§ 11,12,13, 14, 15 and 16 shall be effective October 1, 2005.

25 **Section 21. Every child entitled to an adequate public education. A new**
26 **§15136 is added to 20 GCA part 4 to read:**

27 §15136. Every child is entitled to an adequate public education.

28