

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

**Bill No. 162 (COR)**

Introduced by:

R. Klitzkie  
Mark Forbes  
J.M.S. Brown  
J.A. Lujan  
Ray Tenorio

**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 AMEND 5 GCA §22205, TO AMEND 7 GCA §6105; TO ADD NEW §7116 TO 7 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 §1116 TO 19 GCA; TO ADD NEW §15136 TO 20 GCA PART 4; TO ENACT EVERY CHILD IS ENTITLED TO AN ADEQUATE PUBLIC EDUCATION ACT**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

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- 3 Section 1. Short title. This act may be cited as the Every Child is Entitled to an  
4 Adequate Public Education Act.  
5 Section 2. Declaration of Policy.  
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7 Section 4. Adds new items 11, 12, 13, and 14 to 1 GCA §715, Definitions.  
8 Section 5. Amends 5 GCA §1302, Duties and Responsibilities of BBMR.  
9 Section 6. Amends 5 GCA §1303, Management of Allotments.  
10 Section 7. Amends 5GCA §3101, Department of Administration.  
11 Section 8. Amends 5 GCA §3107, Guam Public School System.  
12 Section 9. Amends 5 GCA §4109, Program Execution.  
13 Section 10. Amends 5 GCA §22203, Duties of the Director of Administration.  
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15 Section 12. Amends 7 GCA §6105, Waiver of Immunity.

- 1 Section 13. Adds new §7116 to 7 GCA, Expedited Schedule of Discovery.  
2 Section 14. Amends §11307 of 7 GCA, Limitation of actions.  
3 Section 15. Adds new §12108.1 to 7 GCA, Standing to sue.  
4 Section 16. Adds new section 26603.1 to 7 GCA, Attorney’s fees.  
5 Section 17. Amends 17 GCA § 3103 (j), Duties of the Superintendent.  
6 Section 18. Amends 17 GCA §3112(a) 14, Duties and Responsibilities of the  
7 Guam Education Policy Board.  
8 Section 19. Adds new §3210 to 17 GCA, Construction with Other Laws.  
9 Section 20. Adds new §1116 to 19 GCA, Minors May Sue.  
10 Section 21. Transitional provisions and effective dates.  
11 Section 22. Adds new §15136 is added to 20 GCA part 4, Every child entitled to  
12 an adequate public education.

13  
14 **Section 1. Short title.** This act may be cited as the Every Child is Entitled to an  
15 Adequate Public Education Act.

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

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

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

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

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

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

**to read:**

Words and Terms Defined: Significance of Words.

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

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

- a) certified teachers for every class in a ratio established by relevant collective bargaining agreements,
- b) properly ventilated classrooms in which the sensible air temperature is no greater than 78° F.,
- c) a supply of potable water sufficient to provide each student a daily ration of drinking and washing water,
- d) a reliable source of electricity
- e) proper sanitation to include flushable toilets, clean restrooms, dining areas and classrooms,
- f) adopted textbooks and workbooks issued to each public school student for the classes in which he or she is enrolled,
- g) libraries, which meet the standards of the American Association of School Librarians, at each school, operated by certified librarians
- h) a healthful, safe, sanitary learning environment
- i) 180 instructional days each school year with school years ending no later than June 10.

13. Public school means a facility established, maintained or operated pursuant §29b of the Organic Act, as amended.

14. Public school student means a child who is required to attend school by Section 1421b. (r) of the Organic Act or 17 GCA §6102 who has not been expelled from public school.

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

§ 1302. Duties and Responsibilities of the Bureau.

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

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

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

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

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

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

§ 1303. Management of Allotments.

In the release of monthly or quarterly allotments by the Bureau of Budget & Management Research from appropriation acts, the Director thereof shall base such allotments on anticipated cash receipts so that the obligations incurred pursuant to such release of periodic allotments shall have sufficient cash for their payment-, provided that sufficient cash shall be released to the Guam Public 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 29b of the Organic  
8 Act, as amended.

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10           **Section 8. Guam Public School System. 5 GCA §3107 is amended to read:**  
11           § 3107. ~~Department of Education.~~ Guam Public School System.

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

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22           **Section 9. Program Execution. 5 GCA §4109 is amended to read:**  
23           § 4109. Program Execution.

24           **(a)** Except as limited by policy decisions of the Governor, appropriations by the  
25 Legislature, and other provisions of law, the territorial agencies shall have full authority  
26 for administering their program service assignments, and shall be responsible for their  
27 proper management.

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

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

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

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

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

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

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

23

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

26 § 22203. Duties of Director.

27 The Director shall, with due regard for the function of the specific agencies  
28 concerned, organize and operate the accounting system on a fund basis with a self-  
29 balancing set of accounts, recording cash and/or other resources together with all related  
30 liabilities, obligations, reserves and equities which are segregated for the purpose of  
31 carrying on specific activities or attaining certain objectives; establish an accounting

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

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22 **Section 11. Exceptions to Central Account Act. 5 GCA §22205 is amended to**  
23 **read:**

24 § 22205. Exceptions.

25 The provisions of this Act shall not apply to the accounting operations of the  
26 Guam Waterworks Authority, the Guam Power Authority, the Guam Telephone  
27 Authority, the Guam International Airport Authority, the Guam Housing and Urban  
28 Renewal Authority, the Guam Housing Corporation, the Guam Economic Development  
29 Authority, the Judicial Branch, the Legislative Branch, the Guam Community College,  
30 ~~the Department of Education~~, the University of Guam, the Guam Mass Transit Authority  
31 and the Division of Vocational Rehabilitation.

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**Section 12. Waiver of Immunity. 7 GCA §6105 is amended to read:**

§ 6105. Waiver of Immunity.

Pursuant to Section 3 of the Organic Act of Guam, the Government of Guam hereby waives immunity from suit, but only as hereinafter provided:

(a) for all expenses incurred in reliance upon a contract to which the Government of Guam is a party, but if the contract has been substantially completed, expectation damages may be awarded;

(b) for claims in tort, arising from the negligent acts of its employees acting for and at the direction of the government of Guam, even though occurring in an activity to which private persons do not engage. For the purposes of this chapter, any officer or enlisted person of the Guam National Guard on territorial duty or any nursing student acting for and at the direction of the University of Guam or of the Guam Community College shall be deemed an employee of the government.

(c) The Government of Guam shall not be liable for claims arising from an exercise of discretion in making policy except when the exercise of discretion results in the denial of an adequate public education to a public school student.

**Section 13. Expedited Schedule of Discovery. A new §7116 is added to 7 GCA to read:**

§ 7116. Expedited Schedule of Discovery.

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

**Section 14. Limitation of Actions. §11307 of 7 GCA is amended to read:**

§11307. Within One Year --

(1) An action upon a law for a penalty or forfeiture, when the action is given to an individual, or to an individual and the government, except when the law imposing it prescribes a different limitation;

1 (2) An action upon a law, or upon an undertaking in a criminal action, for a  
2 forfeiture or penalty to the government of Guam.

3 (3) An action for libel or slander, or by a depositor against a bank for the payment  
4 of a forged or refused check, or a check that bears a forged or unauthorized endorsement.

5 (4) An action upon a claim by a public school student for denial of an adequate  
6 public education.

7

8 **Section 15. Standing to Sue. A new §12108.1 is added to 7 GCA to read:**

9 §12108.1. Public school student: Standing to sue. A public school student shall  
10 have a claim and standing to sue the government of Guam and any officer of the  
11 Executive Branch of the government of Guam in his official capacity for the purpose of  
12 enjoining such officer from failing to provide an adequate public education to that public  
13 school student and, as to the government of Guam, for damages, pursuant to the Claims  
14 Act.

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16 **Section 16. 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.

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

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

25

26 **Section 18. Duties and Responsibilities of the Guam Education Policy Board.**  
27 **17 GCA §3112(a) 14 is amended to read:**

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

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

3           §3210. Construction with Other Laws.

4           Insofar as the provisions of the **Every Child is Entitled to an Adequate Public**  
5 **Education Act of 2003.**

6 are inconsistent with the provisions of any other law, the provisions of this Act shall be  
7 controlling; and in particular but not by way of limitation, except as may be provided in  
8 this Act, no provision of any law, shall be applicable to the government of Guam with  
9 respect to the provisions of the Adequate Public Education Act of 2003 unless the  
10 Legislature shall specifically so state.

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

13           § 1116. Minors May Sue.

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

17 (b) A parent of a public school student may conduct a civil action for injunctive relief,  
18 mandate, prohibition or other legal remedy on behalf of the public school student to  
19 secure or maintain the public school student's right to an adequate public education.

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21           **Section 21. Transitional provisions and effective dates.** Sections 1, 2, 3, 7, 9,  
22 16, 17, 18 and 20 shall be effective upon the enactment of this act. Sections 4, 5, 6, 8 and  
23 10 shall be effective on ninety (90) days after the enactment of this act. Sections 11, 12,  
24 13, 14, 15 and 19 shall be effective 180 days after the enactment of this act provided that  
25 the Education Policy Board may, by resolution, extend the effective date for up to 90  
26 days.

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28           **Section 22. Every child entitled to an adequate public education. A new**  
29 **§15136 is added to 20 GCA part 4 to read:**

30           §15136. Every child is entitled to an adequate public education.