



UNITED STATES DEPARTMENT OF EDUCATION

THE UNDER SECRETARY

September 17, 2003

Honorable Felix P. P. Camacho
Governor of Guam
Office of the Governor
Executive Chamber
Agana, GU 96932

Dear Governor Camacho:

The purpose of this letter is to inform you of the U.S. Department of Education's (Department) great concern about the lack of fiscal and programmatic accountability for the administration of Federal education programs by the Guam Department of Education. The Assistant Secretary for Intergovernmental and Interagency Affairs and other Department officials have discussed these matters with you informally over the past couple of weeks, and I appreciate your understanding of the problems and your commitment to addressing these problems expeditiously. Department officials have also met with the Public Auditor of Guam and were gratified by her efforts to begin to address these issues.

The major accountability problems stem from the inability of the Guam Department of Education (DOE) to provide us with timely and complete single audits, as required under the Single Audit Act. For a number of years, Guam has failed to submit timely and sufficient single audits as required under the Single Audit Act for the administration of programs by the Guam DOE. Required audits have not been submitted for fiscal years 1998, 1999, 2000, 2001, and 2002. Audits of fiscal years beginning after June 30, 1998 are required by law to be submitted no later than nine months after the annual period being audited.

While the Government of Guam has submitted single audits through fiscal year (FY) 2001, these audits have not covered most or all U.S. Department of Education funding to the Guam DOE. As a result, auditors were engaged to perform an audit of the Guam DOE for FYs 1998 through 2001; however, the auditors have declared the records of the Guam DOE to be "unauditable" for FYs 1998, 1999, and 2000, and they recommended that the financial statements for FY 2001 be reconstructed, so an audit can be performed for FY 2001 (Attachment 1). This is a very serious situation because, without auditable records and without the completion of these audits on a timely basis, the Department has no assurance that Federal funds are being properly expended and accounted for.

The auditors' specific assessment of Guam DOE's financial records for FYs 1998, 1999, 2000, and 2001 has raised serious concerns. For example, the auditors found that bank statements were not reconciled over the entire four years; balance sheets for twenty-five

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funds did not balance at the end of each fiscal year, with out-of-balance amounts as high as \$12 million; year-end balances did not roll over from year to year for the majority of funds in 1999 and 2000; and interfund cash account balances did not reconcile. Furthermore, auditors reported that there is a major problem with unrecorded transactions. All of these significant problems seriously impede Guam's ability to provide quality educational services to the students with Federal education funds, and these problems must stop as soon as possible.

The Single Audit Act is the principal oversight mechanism for the Federal funds administered by the Guam Department of Education; therefore, Guam's non-compliance with the annual audit requirement has caused us significant concern. This has resulted in serious accountability problems and concerns regarding the administration and management of Federal education programs in Guam, and concern over whether Federal education funds are being properly administered as intended to benefit the students in Guam. The submission of late single audits seriously compromises the auditors' ability to perform an appropriate high quality audit and, with the running of the statute of limitations, circumvents the Department's ability to carry out all of its responsibilities, including the recovery of questioned costs if necessary. The requirement for timely and complete single audits is a fundamental requirement to ensure proper accountability, and the submission of late audits cannot be allowed to continue.

Based on the problems outlined above, as of the date of this letter, we are designating the Guam DOE a "high-risk grantee" under 34 C.F.R. 80.12, making it subject to special conditions in all of the Federal education programs it administers. All of these grants are subject to the attached special conditions, which will be referenced in the grant awards your government and the Guam DOE receives from this Department (Attachment 2). I am aware that the conditions causing this status appear to have existed for a number of years, and I appreciate the fact that your administration inherited much of the problem, and has begun to try to address it.

My hope is that the commitments that you and the Public Auditor have given the government of Guam, including the Guam DOE, will demonstrate the commitment and initiative necessary to eliminate the fiscal and programmatic accountability problems in Guam, and will demonstrate significant progress in implementing necessary changes and improvements. My staff stands ready to answer questions and provide technical assistance on the applicable Federal requirements in the programs affected and on more general grant fund accountability, but it will take a genuine and continuing commitment by the Guam government to complete the needed corrective actions in a timely manner.

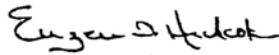
I remain hopeful that Guam will be able to address our concerns in the near future. Hazel Fiers of the Office of the Deputy Secretary is the primary contact for questions and requests for assistance from Guam. She can be reached at (202) 708-9132. An additional

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contact is Tina Otter of the Office of the Deputy Secretary, who can be reached at (202) 401-0462.

We take seriously our mutual responsibilities to ensure that Federal program funds are being spent properly to assist students, and we look forward to working with you to improve the delivery of Federal education services so that no child in Guam is left behind.

Sincerely,



Eugene W. Hickok

Enclosure

cc: Juan Flores
Superintendent of Education
Guam Department of Education
P.O. Box DE
Hagatña, Guam 96932

ATTACHMENT 1

December 26, 2002

Joint Press Release by the Office of the Public Auditor and DOE Guam Education Policy Board

Auditor Declares DOE Records Unauditable!

Since taking Office in January 2001, Public Auditor Doris Flores Brooks has raised concerns that the Department of Education, the largest Government of Guam agency, has not been audited since fiscal year 1997. In late 2001, the Department of Interior Office of the Inspector General, as well as other federal agencies, expressed concern over the lack of accounting for DOE expenditures. In June of this year, Public Auditor Brooks spearheaded an initiative to bring the DOE financial reporting in line with federal requirements and Guam law.

As a first step, in May 2002, Brooks selected Deloitte Touche Tohmatsu LLP to perform an assessment of the auditability of DOE's financial records for fiscal years 1998, 1999, 2000 and 2001. The next step would be to perform audits of all federal receipts and expenditures. Then there would be an assessment of which fiscal year audits could be economically performed. Representatives of the Offices of Inspector General for the U.S. Department of Education and Department of Interior agreed to the approach in June 2002.

In November 2002, Deloitte and Touche issued a draft "auditability assessment" of the Department of Education. The key findings in the draft report were:

- Bank statements were not reconciled over the entire four years, 1998 to 2001.
- Balance sheets for 25 funds did not balance at the end of each of the fiscal years. Out of balance amounts ranged from as low as \$76 to as high as \$12 million.
- Net fund equity, or year-end balances, did not roll over from year to year for the majority of funds in 1999 and 2000.
- Interfund cash account balances did not reconcile. Variances were \$34 million and \$36 million as of September 30, 1999 and 2000 respectively.
- There is a major problem with unrecorded transactions, particularly with revenues and cash receipts. Wire transfers and interbank transfers for several years have not been recorded.

Deloitte and Touche has opined that the DOE financial records for the years 1998, 1999, and 2000 are not auditable in their current state. Deloitte has recommended that the financial statements for 2001 should be reconstructed and then subject to a full financial audit. Brooks said that would leave in question the accountability of funds for the three previous fiscal years.

Public Auditor Brooks presented copies of the draft report to members of the Education Policy Board on Thanksgiving Eve. Since then the Board has formed a Finance Committee to deal with the accounting crisis. The Finance Committee together with OPA representatives and Deloitte and Touche representatives have been meeting to form a course of action. Among the actions to be taken are:

- Major restructuring of DOE Business Office;
- Recruitment of competent accounting personnel including a Chief Financial Officer;
- Assistance by Deloitte and Touche in the reconstruction of DOE financial records; and
- Requests for technical assistance from the Department of Interior.

Both Public Auditor Brooks and Chairperson Rosa Salas Palomo stated that getting DOE's financial house in order is the number one priority. "If our financial records are not in order Guam could lose million of dollars in federal grants for the Department. Given the General Fund's anemic condition the loss of DOE federal funding would wreak havoc over the government's finances," Brooks said. Moreover, the federal government could insist on draw downs of federal grants on a reimbursement basis which would further exacerbate the government's cash flow problems, Brooks added.

The full text of Deloitte's report can be found at the OPA website. www.guamopa.org.

Commonwealth of Guam Department of Education – Special Conditions

PREAMBLE: These special conditions are imposed on the Government of Guam Department of Education's (GDOE's) program grants issued by the U.S. Department of Education (Department) on or after the date of these special conditions. Additionally, the special conditions apply to funds granted by the Department to the GDOE that are still available for obligation on the date of these special conditions. These special conditions are applied to these program grants and funds in accordance with the Department's regulations governing "high risk" grantees in 34 CFR §80.12. The special conditions are imposed to help ensure that the GDOE awards are expended in accordance with applicable legal requirements and with appropriate fiscal accountability measures and management practices and controls.

I. EXPLANATION OF HIGH-RISK STATUS

Under the authority of the Education Department General Administration Regulations (EDGAR), 34 CFR §80.12, the Department has determined that the GDOE is a "high-risk" grantee for purposes of these grant awards because of problems in GDOE's fiscal and program accountability and related areas. Our conclusion is based on the following findings:

- A. The GDOE has not been in compliance with the Single Audit Act. Over a period of a number of years, GDOE has submitted its single audits significantly late or has not submitted them at all. No audits of GDOE programs have been issued for Fiscal Years (FYs) 1998, 1999, 2000, 2001, and 2002. While the Government of Guam has submitted single audits through FY 2001, their audits have been submitted late and have excluded all or most Department funding to the GDOE.
- B. Because of these conditions, auditors were engaged to perform financial audits of GDOE for FYs 1998 through 2001. The auditors declared the records of GDOE to be unauditible for FYs 1998, 1999, and 2000, and they recommended the financial statements for FY 2001 be reconstructed so an audit could be performed for FY 2001. The auditors found, among other things that bank statements were not reconciled over the entire four years; balance sheets for twenty-five funds did not balance at the end of each FY, with out of balance amounts as high as \$12 million; year-end balances did not roll over from year to year for the majority of funds in 1999 and 2000; and interfund cash account balances did not reconcile. Furthermore, auditors reported that there was a major problem with unrecorded transactions.
- C. The lack of single audit coverage of GDOE, and the auditors' assessment of GDOE's financial records for FYs 1998, 1999, 2000, and 2001 are matters of very serious concern to the Department. All of these significant problems and lack of proper accountability hamper GDOE's ability to properly administer these programs and provide appropriate education services to their students with Federal education funds, and our Department's ability to carry out its administrative responsibilities with regard to these grants.

II. SPECIAL CONDITIONS

A. Reporting Requirements: Liquidations and Purpose of Expenditures

The Department will allow GDOE to draw down grant funds only up to fifty percent of the funds available in each of the grants issued on or after the date of these special conditions until the documentation requested below for each program is submitted and approved as acceptable by the Department. For each affected program and each obligation made on or after the date of these special conditions, this documentation must show that the funds are being spent for allowable purposes, that sufficient progress is being made in the affected programs, and that the funds drawn down are being spent in a timely manner with appropriate certifications. These expenditures and the documentation will also be subject to further monitoring, auditing, and review. The GDOE will provide the following (see also section IV B on submission of reports below):

1. A detailed quarterly report on the administration of each Federally funded program by GDOE, the expenditures made by the GDOE in each program that will satisfy the accountability needs of the Department, and descriptions of the progress of each significant aspect of the program at school, "district" and GDOE levels. Expenditures (or liquidations) may be grouped by category (e.g., purchase of computers, professional development, etc.) but they must be in sufficient detail for the Department to match against the program application or spending plan, if applicable, and allow the Department to determine the allowability of the expenditures (or liquidation). The descriptions on progress must also provide enough detail on program activities to determine if sufficient progress is being made in the program. The reports shall also include the information required below.
2. The GDOE's Superintendent of Education, in his capacity as the "certifying officer of GDOE" or another authorized official of GDOE, shall certify, under penalty of Federal law, to the accuracy and completeness of the reports, including verification that all of the expenditures are being made for authorized purposes under each of the programs.
3. The GDOE shall consider adopting a "transparent" budgeting and expenditure reporting system that would be readily available to the public, and the Department and its representatives, so that all of these parties can easily understand the expenditures that are planned and carried out under each of the Federally funded grant programs. In each of the quarterly reports, GDOE shall report on its consideration of and progress in adopting such a system. At a minimum, GDOE must post on an Internet web site (available to the general public) the budget, application, and reports mentioned above, and the information in the reports on the Internet must be updated on the site on a monthly basis.

GDOE shall submit to the Department its reports and certifications no later than thirty days after the end of each quarter (for example, the first quarter ends on December 30, 2003, so the first report will be due on January 30, 2004). If a report is not timely or is

not considered acceptable by the Department, the Department may take one or more remedies including the following for that program: giving GDOE notice that it will not be given authority to draw down the rest of the funds; the imposition of further conditions; the recovery of misspent funds; or the implementation of a contract with a third party to provide the services.

B. Single Audits

With the first quarterly reports due January 30, 2004, GDOE shall include a plan for making its records completely auditable, arranging for the delinquent single audits for Federal Fiscal Years 1998, 1999, 2000, 2001, and 2002, submitting the delinquent single audit reports on an expedited basis. GDOE, in cooperation with its contract single auditor, and its Public Auditor shall have as its goal to submit the single audits for FYs 1998, 1999, 2000, and 2001 no later than November 30, 2003, the FY 2001 financial audit no later than November 30, 2003, the single audit and financial audit for FY 2002, no later than March 31, 2004, and the single audit and financial audit for FY 2003, no later than June 30, 2004 (the required submission date for the FY 2003 single audit under the Single Audit Act of 1984 as amended). The GDOE will provide progress reports on implementing this plan with each subsequent quarterly report. All single audits required thereafter by the independent auditors shall be completed and the report published within nine months after the end of each fiscal year as required by the Single Audit Act of 1984 as amended. If the plan (including proposed timelines for completion of actions) is not acceptable to the Department, or if the plan is not being implemented in a manner acceptable to the Department, the Department may take one or more remedies including the following: giving the GDOE notice that the GDOE will not be given authority to draw down the rest of the funds; the imposition of further conditions; the recovery of misspent funds; or the implementation of a contract with a third party to provide the services.

C. Resolving Audit Findings

1. The GDOE shall report to the Department, as part of the quarterly reports, progress in resolving applicable audits findings on all matters affecting funds under these grant programs. This will include the resolution of all pending findings resulting from single audits, other audits or reviews, and from findings made by the Guam Office of Public Auditor (GOPA).
2. If any audits by other federal agencies or other single or other audits or reviews of any other part of the Government of Guam contain findings on cross-cutting issues (e.g., procurement, property, financial management) affecting the administration of these program funds, or that cover funds under any of these grant programs, the GDOE shall promptly report such findings to the Department and to the GOPA, and outline the corrective actions to be taken.

D. Oversight Agent or Internal Audit Unit Such as the Guam Office of Public Auditor (GOPA)

1. All Department grant recipients are required to provide assurances that grant funds are being spent according to program and legislative requirements. The Department relies on these assurances to approve grant applications. Due to the high-risk status of the GDOE and the conditions that contributed to that status, the GDOE shall provide the Department timely confirmation of the matters covered in its reports through the services of an independent oversight agent that will provide extra monitoring of its expenditures and progress or through an appropriate independent internal audit unit of the Government of Guam, such as the GOPA.

If an Agent is necessary, the Agent will be selected by the GDOE in consultation with the GOPA, with the approval of the Department in a fair and competitive process consistent with applicable procurement procedures. The work of the Agent may be under the supervision of the GOPA or an independent audit committee selected by the Governor of Guam. The Agent will be paid from administrative funds from appropriate Federally funded programs. The GDOE will work with the Department and the GOPA in developing a procurement request for proposals soliciting responses from prospective agents. Selection criteria for the oversight Agent will include a proposal submitted by the prospective Agent as to methods to be used in satisfying the responsibilities of the agent. Responsibilities of the Agent will include:

- a. Timely independent, and reliable monitoring of the implementation of fiscal and programmatic management improvements implemented by GDOE.
- b. Timely independent, and reliable monitoring of the expenditure of Department funds by GDOE including items listed in section *II.A. Reporting Requirements: Liquidations and Purpose of Expenditures*, above.
- c. Filing quarterly reports with the Department, the GDOE, the GOPA, and the Chairman of the Guam Education Policy Board concerning the status and progress of items one and two above.

The work of the Agent shall be covered in a contract developed by GDOE and approved by the GOPA and the Department that will build on, and not duplicate the work of GOPA or any internal audit units that are available within the Government of Guam. To help ensure that there is no duplication, GDOE in consultation with GOPA will submit to the Department information on the proposed monitoring activities of any internal audit office.

The Agent must have full access to all GDOE offices, staff, all financial transaction records, program administration reports, reports generated by the GDOE's internal audit staff, contractor-related documentation, and any other documentation pertaining to programs using funds allocated to GDOE by the Department. The Agent will perform its duties until such time as proper internal controls are in place and functioning for a period sufficient to assure the

Department that they will continue to function and that they are effective in protecting Federal funds.

2. The GDOE may satisfy this condition by the use of an internal audit unit such as GOPA capable of exercising the responsibilities outlined above. If such a unit is used to satisfy this condition, the structure of the office, its work plan and other procedures shall be submitted to the Department to ensure that it can satisfy this condition and provide timely, independent and reliable reviews of the grant programs covered by these special conditions. This Unit must begin carrying out these duties within six months from the awarding of the grants, and will continue to carry out these duties until such time as proper internal controls are in place and functioning for a period sufficient to assure the Department that they will continue to function and that they are effective in protecting Federal funds.

3. The GDOE shall also consider hiring a Chief Financial Officer and report on that hiring in its quarterly reports.

E. Prompt Access

The Guam DOE shall promptly provide the Department or its representatives access to any requested staff, locations, records and information associated with the affected grant funds.

F. Failure to Comply with Conditions

In addition to the remedies described in Section II A and B above, if the U.S. Department of Education determines that the GDOE has not made substantial progress in meeting the objectives of the program, or has not met program requirements or the Special Conditions contained in paragraphs A-E above, then the Department may consider not continuing the grant or taking further enforcement action steps, or apply additional conditions such as the following:

1. The GDOE would receive no further funds under this grant award or only on a reimbursement basis; and
2. The GDOE would contract with a third party, who must be approved by the Department, to provide the services or financial management under this grant award. The third party would, at a minimum, assist in preparing the vouchers to be submitted to the Department for reimbursement, and would verify their accuracy and legitimacy as appropriate expenditures under applicable grant awards.

III. OTHER TERMS

A. Enforcement

If the GDOE fails to meet any of the above special conditions, the Department is authorized to take other appropriate enforcement action. These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other actions at any time.

B. Submission of Reports

All reports that are required to be submitted by GDOE to the Department under these special conditions shall be submitted to:

Hazel Fiers,
Office of the Deputy Secretary
U.S. Department of Education
FB-6,
400 Maryland Avenue, S.W.
Washington, DC 20202-6110

C. Reconsideration and Modifications

At any time, GDOE may request reconsideration of the above special conditions by contacting the Department and stating reasons why GDOE believes particular conditions are no longer needed. Additionally, the Department may impose additional special conditions or modify these special conditions as appropriate. The Department will remove the special conditions at such time as GDOE meets, to the Department's satisfaction, the conditions mentioned above.

Dated: _____