



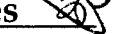
MINA' BENTE NUEBI NA LIHESLATURAN UAHAN  
2007 (FIRST) REGLAR SESSION

2007 SEP 22 PM 2:05

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Bill No. 113 (LS)

Introduced by:

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AN ACT TO ADD A NEW CHAPTER 11 TO 17 G.C.A.  
TO ESTABLISH THE OFFICE OF THE ADEQUATE  
EDUCATION SURUHANU (OMBUDSMAN), TO  
AMEND §12108.1(a) OF 7 G.C.A., §3103(o) OF 17 G.C.A.,  
AND §1116 OF 19 G.C.A. RELATIVE TO THE  
ADEQUATE EDUCATION ACT

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

2 **Section 1.** A New Chapter 11 is added to 17 G.C.A. as follows:

3 **“CHAPTER 11 –**  
4 **OFFICE OF THE ADEQUATE EDUCATION SURUHANU**  
5 **(OMBUDSMAN)**

6 **§1100. Creation of Office.** The Office of the Adequate  
7 Education Suruhanu (hereinafter referred to as the ‘Education  
8 Suruhanu’) is hereby established as a division within the Guam  
9 Public School System (hereinafter referred to as ‘GPSS’). The  
10 Education Suruhanu shall be the head of the office.

1       **§1101. Qualifications.** (a) The Education Suruhanu shall be a  
2       person of recognized judgement, objectivity and integrity who  
3       is well equipped to analyze problems of law, administration  
4       and public policy.

5       (b) No person while serving as Suruhanu:

6               (1) shall be actively involved in political party activities;

7               (2) shall be candidate for or hold other public office,  
8               whether elective or appointive; or

9               (3) shall be engaged in any other occupation, business or  
10              profession.

11       (c) The Education Suruhanu shall have the following  
12       educational/professional requirements:

13              (1) Master's Degree in Education, Business, Public  
14              Administration, or other related field from a college or  
15              university accredited by a United States accrediting body  
16              recognized by the Council on Higher Education  
17              Accreditation (CHEA) or its successor, or an equivalent  
18              foreign university. The test of whether or not a foreign  
19              degree is equivalent to a degree granted by a college or  
20              university accredited by a CHEA recognized accrediting  
21              body shall be based on any of the following:

22                      (i) Such degree qualifies the degree-holder for  
23                      enrollment in a graduate or post-graduate program

1 in a college or university accredited by a CHEA  
2 recognized accrediting body;

3 (ii) Such degree qualifies the degree-holder for  
4 employment in a faculty or academic accrediting  
5 body; or

6 (iii) The degree was conferred by a foreign  
7 institution recognized by the United States  
8 Department of Education at the time such degree  
9 was conferred;

10 (2) Five (5) years experience in the field of educational  
11 leadership, public administration, management, or other  
12 related field; and

13 (3) Good moral character and never convicted of a felony  
14 or any crime involving moral turpitude.

15 **§ 1102. Removal and Termination.** (a) Termination of the  
16 Education Suruhanu shall require an affirmative vote of six (6)  
17 Board members. Upon passage of a resolution for termination,  
18 the Chairperson of the Board shall notify the Education  
19 Suruhanu of the Board's action in writing and shall expressly  
20 state the grounds for termination in said notification. When the  
21 Board serves said notice, the Education Suruhanu shall be on  
22 administrative leave until he is either reinstated or terminated  
23 and GPSS shall be administered by an acting Education

1       Suruhanu appointed by the Board Chairperson. The Education  
2       Suruhanu will then be permitted to meet with the Board, in  
3       executive session, within three (3) working days after service of  
4       the notification, to informally discuss the termination. If the  
5       Board decides to proceed with termination, the Education  
6       Suruhanu shall have the right to a full and public hearing on  
7       the matter within seven (7) days after the Board's decision,  
8       during which hearing full disclosure of the cause for  
9       termination shall be made, and during which, at the request of  
10      the Education Suruhanu, full testimony shall be received from  
11      the public. In any case, the Education Suruhanu shall have the  
12      right to make a full and complete presentation of his personal  
13      testimony at such hearing.

14      (b) *Only* the following constitute cause for the discharge of the  
15      Education Suruhanu:

16              (1) holding financial interests that conflict with the  
17              conscientious performance of his duties;

18              (2) engaging in financial transactions using confidential  
19              or non-public GPSS information or allowing the improper  
20              use of such information to further any private interests;

21              (3) *except* as permitted by statute or regulation, the  
22              solicitation or acceptance of any item of value from any  
23              person or entity seeking official action from, doing

1 business with, or conducting activities regulated by GPSS,  
2 or from persons whose interest may be substantially  
3 affected by the performance or nonperformance of the  
4 Education Suruhanu's duties, or the duties of GPSS;

5 (4) knowingly making commitments or promises of any  
6 kind purporting to bind GPSS except as permitted by law;

7 (5) use of his official position for his private gain or that of  
8 others;

9 (6) failure to disclose waste, abuse and corruption to the  
10 appropriate authorities;

11 (7) failure to respect the rights and privacy of others and  
12 the use of his official position, authority or other means to  
13 injure another person for personal reasons or malicious  
14 purposes;

15 (8) fraud or misrepresentation in securing his  
16 appointment;

17 (9) refusal or failure to perform duties and responsibilities  
18 as defined by law;

19 (10) unlawful use, possession or sale of illicit drugs and  
20 alcohol;

21 (11) criminal acts involving moral turpitude;

22 (12) political activity prohibited by law;

1 (13) misuse, misappropriation or theft of government  
2 property or funds;

3 (14) prohibited acts of discrimination, including sexual  
4 harassment; or

5 (15) abandonment of his position.

6 **§1103. Term of Office** The Education Suruhanu shall be  
7 appointed by the Board. Notwithstanding any other provision  
8 of law, the employment of the Education Suruhanu shall be by  
9 contract for a term of three (3) years, which contract shall  
10 contain a provision that the Education Suruhanu's employment  
11 may only be terminated for *cause*, as defined herein. The  
12 Education Suruhanu shall serve for a term of three (3) years.  
13 He/she may be reappointed for additional terms.

14 **§1104. Salary.** The salary of the Education Suruhanu shall be  
15 established by a majority vote of the Guam Education Policy  
16 Board at the time of his/her election to office but shall not be  
17 more than Step 4 of a Principal's Salary.. During his/her term of  
18 office, the salary of the Education Suruhanu may be increased  
19 only upon the adoption of a resolution or a statute. The salary  
20 of the Education Suruhanu shall not be reduced during his  
21 term of office except as a part of a uniform and government-  
22 wide reduction of salaries of all elected officials and officers of  
23 the Government whose appointment is subject to the

1 concurrence of the Legislature. The Suruhanu and his/her staff  
2 shall be entitled to participate in any employee benefit or  
3 retirement plan available to the government of Guam  
4 employees.

5 **§1105. Powers.** The Education Suruhanu shall have the  
6 following powers:

7 (a) To investigate, on complaint of a person pursuant to Public  
8 Law 28-45, *'Every Child is Entitled to an Adequate Public Education*  
9 *Act'*.

10 (b) To adopt, promulgate, amend and rescind rules and  
11 regulations required for the discharge of his duties, including  
12 procedures for receiving and processing complaints,  
13 conducting investigations and reporting his findings. However,  
14 he may not levy any fees for the submission or investigation of  
15 complaints.

16 (c) To examine the records and documents of the Guam Public  
17 School System (GPSS) except those records and documents  
18 privileged from inspection because of their confidential nature.

19 (d) To enter and inspect without notice the premises of any  
20 GPSS School, Office, or Facility.

21 (e) To subpoena any employee or agent of the government of  
22 Guam to appear, give sworn testimony or to produce  
23 documentary or other evidence that is reasonably material to

1 his inquiry and to administer oaths and affirmations in all  
2 matters incident to his duties.

3 (f) To undertake, participate in or cooperate with persons and  
4 agencies in such conferences, inquiries, meetings or studies as  
5 might lead to improvements in the functioning of GPSS relative  
6 to compliance with Public Law 28-45.

7 (g) To obtain such information and make such inquiries from  
8 any agency or person as he shall require for the discharge of his  
9 duties.

10 (h) To maintain secrecy in respect to all matters and the  
11 identities of the complainants or witnesses coming before him.

12 (i) To concern himself with the strengthening of procedures and  
13 practices which lessen the risk that objectionable administrative  
14 acts will occur.

15 (k) To bring civil proceedings in any appropriate court to  
16 enforce the provisions of this Chapter and to retain legal  
17 counsel to effectuate the intent of this Subsection and this

18 (l) To maintain secrecy in respect to all matters and the  
19 identities of the complainants or witnesses coming before him.

20 (m) To concern himself with the strengthening of procedures  
21 and practices which lessen the risk that objectionable  
22 administrative acts will occur.



1 (n) To bring civil proceedings in any appropriate court to  
2 enforce the provisions of this Chapter and to retain legal  
3 counsel to effectuate the intent of this Subsection and this  
4 Chapter.

5 **§1106. Rights of Complainant – Communication with**  
6 **Complainant.**

7 (a) After the Education Suruhanu has received a complaint,  
8 he/she shall suitably inform the complainant.

9 (b) The Education Suruhanu shall, if requested by the  
10 complainant, report the status of his investigation to the  
11 complainant.

12 (c) After investigation of a complainant, he shall suitably inform  
13 the complainant of his conclusion or recommendation, if any  
14 appropriate, any action taken or to be taken by the agency  
15 involved.

16 (d) No person who files a complaint pursuant to this Chapter  
17 shall be subject to any penalties, sanctions or restrictions in  
18 connection with his/her employment because of such  
19 complaint.

20 **§ 1107. Investigation of Complaints.**

21 (a) The Education Suruhanu shall investigate any complaint  
22 alleging that an act of an agency is:

1 (1) contrary to or inconsistent with law, regulation or  
2 agency practice;

3 (2) based on mistaken facts or irrelevant considerations;

4 (3) inadequately explained when reasons should have  
5 been revealed;

6 (4) inefficiently performed; or

7 (5) unreasonable, unfair or otherwise objectionable, even  
8 though in accordance with law.

9 Unless the Education Suruhanu at his discretion decides not to  
10 investigate a complaint because:

11 (1) the complainant could reasonably be expected to use  
12 another remedy or channel, and then the Education  
13 Suruhanu shall furnish the complainant with written  
14 instructions on the procedural steps to be taken in  
15 connection with such other remedy or channel;

16 (2) the complaint is trivial, frivolous, vexatious or not  
17 made in good faith;

18 (3) the complaint has been too long delayed to justify  
19 present examination; and

20 (4) his resources are insufficient for adequate  
21 investigation in which case the Education Suruhanu shall  
22 refer the complaint to the proper legislative committee for  
23 investigation.

1 (b) The Education Suruhanu in his discretion may investigate  
2 any administrative act of an agency not enumerated in  
3 Subsection (a).

4 (c) If the Education Suruhanu declines to investigate a  
5 complaint he shall not be barred from reviewing on his motion  
6 acts of an agency whether or not included in the complaint.

7 **§ 1108. Reports.** The Education Suruhanu shall report monthly  
8 on his/her activities to *I Maga'lahaen Guahan* and *I Liheslaturan*  
9 *Guahan*.

10 **§ 1109. Relation to Other Laws.** The provisions of this Chapter  
11 are in addition to and do not in any manner limit or affect the  
12 provisions of any other statute under which any remedy or right  
13 of appeal is provided for any person or any procedure is  
14 provided for the inquiry into or investigation of any matter.  
15 The powers conferred on the Education Suruhanu may be  
16 exercised notwithstanding any provision in any statute to the  
17 effect that any administrative action shall be final or  
18 unappealable.

19 **§1110. Budget Requirements.** The Guam Public School System  
20 shall provide the Education Suruhanu with the necessary  
21 resources to fulfill his responsibilities and duties pursuant to  
22 this Chapter. A budget request prepared by the Education

1 Suruhanu shall be included in the annual GPSS budget  
2 submission.

3 **§1111. Severability.** If any part of this Chapter shall be declared  
4 invalid, all other parts shall remain in full force and effect; the  
5 provisions of this Chapter are declared to be severable.”

6 **Section 2.** The Superintendent of Education shall ensure that  
7 the costs for implementing this Act are paid from the sums  
8 appropriated to the Guam Public School System in Section Chapter II,  
9 Part I of this Act.

10 **Section 3.** Item (o) of § 3103 of Article 1 of Chapter 3 of Title 17  
11 of the Guam Code Annotated is hereby *amended* as follows:

12 **“(o) Adequate Public Education Reporting**  
13 **Requirements.** The Superintendent of Education shall  
14 submit a monthly report of all funds available to the  
15 Guam Public School System, whether or not their  
16 resources require appropriations by *I Liheslaturan Guahan*.  
17 The report shall also contain a detailed accounting of all  
18 expenditures of funds relating such expenditures to the  
19 criteria established in 1 GCA §715 and the status of efforts  
20 to comply with the Adequate Education Act. The report is  
21 to be completed no later than fifteen (15) calendar days  
22 after the end of each month and shall be certified by the  
23 Superintendent acknowledging compliance with 1 GCA

1 §715 and in meeting with the objectives of §3125 of this  
2 Chapter. The report shall be submitted to the Guam  
3 Education Policy Board, the Speaker of *I Liheslaturan*  
4 *Guahan* and *I Maga'lahaen Guahan*. ~~Failure to comply with~~  
5 ~~this Section and the criteria of an adequate public~~  
6 ~~education shall subject the Superintendent to civil liability~~  
7 ~~as provided in 7 G.C.A. §20302."~~

8 **Section 4. Adequate Education Compliance.** §12108.1(a) of 7  
9 G.C.A. is hereby *amended* as follows:

10 "(a) A public school student shall have a claim and  
11 standing to sue the government of Guam and any officer  
12 of the Executive Branch of the government of Guam in his  
13 official capacity only for the purpose of enjoining such  
14 officer from failing to provide an adequate public  
15 education to that public school student but *not* for money  
16 damages, only after exhausting the administrative  
17 process contained in Chapter 11, 17 G.C.A."

18 **Section 5.** §1116 of 19 G.C.A. is hereby *amended* as follows:

19 "**§1116. Minors May Sue.** (a) Except as otherwise  
20 provided by Subsection (b), a minor may enforce his  
21 rights by civil action or other legal proceedings, in the  
22 same manner as a person of full age, except that a  
23 guardian must conduct the same only after exhausting

1           the administrative process contained in Chapter 11, 17  
2           G.C.A.”

3           (b) A parent or a legal guardian of a public school student may  
4           conduct a civil action for injunctive relief, mandate, prohibition  
5           or other legal remedy but not money damages on behalf of the  
6           public school student to secure or maintain the public school  
7           student’s right to an adequate public education only after  
8           exhausting the administrative process contained in Chapter 11,  
9           17 G.C.A.”