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11:45 AM

30-10-0416

**MEMORANDUM**

TO: Policy Analyst, Office of the Speaker, 30<sup>th</sup> Guam Legislature  
FROM: Education Suruhanu  
SUBJECT: Proposed Amendments to P.L. 28-45 § 4 (12) – the Fourteen Points.

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Dear Mark:

This memorandum is a follow up to our previous communications and correspondences concerning proposed amendments to various provisions of § 4 (12) otherwise known as the Fourteen (14) Points (the 14 Points) of P.L. 28-45. In addition, included in this correspondence are additional proposed recommendations to some of the provisions of the Fourteen (14) Points for your review and consideration.

A. P.L. 28-45 § 4 (12) (b) — Certified Professional Administrators.

My office recently received a complaint reporting that the individual serving as the Assistant Administrator at the LBJ Elementary School does not possess the necessary qualifications to serve as a certified professional administrator. I conducted an investigation into the matter and found that the individual serving as the Assistant Administrator at LBJ is not a certified administrator. As such, I informed GDOE that they were not in compliance with § 4 (12) (b) of P.L. 28-45 of the Every Child is Entitled to an Adequate Public Education (the Act).

Based on an investigation into the complaint, we learned that Mrs. Garcia is being detailed to serve as the Assistant Administrator at the LBJ Elementary School. We also learned that Mrs. Garcia is not a certified professional administrator but she does hold a Masters Degree in Counseling and was previously providing counseling services to the school. In addition, we found that the Superintendent detailed Mrs. Garcia to serve as the Assistant Administrator for both LBJ and Tamuning sometime in February 2010. The Superintendent indicated that Mrs. Garcia is being detailed to meet the temporary needs of the school and that such detail is pursuant to § 904.506 of GDOE's rules and regulations. Furthermore, the Superintendent indicated that GDOE is not in violation of § 4 (12) (b) because Ms. Reyes, the school Principal, is still assigned to both the Tamuning and LBJ Elementary schools.

Section 4 (12) (b) of the 14 Points states that public schools are required to provide certified professional administrators. Currently there are no exceptions to such requirement. As such, we informed the Superintendent that although Ms. Reyes is a certified professional administrator and thus qualified to serve as a school administrator, Mrs. Garcia on the other hand is not a certified professional administrator and thus, she is not qualified to serve as a school administrator according to the law.

We informed the Superintendent that although § 904.506 of GDOE's rules and regulations may allow for non certified individuals to serve as a school administrator, GDOE

rules and regulations only apply to GDOE employees. On the other hand, § 4 (12) (b) of the 14 Points requires schools to provide certified professional administrators.<sup>1</sup> In other words, § 4 (12) (b) requires that each and every individual assigned to serve as school administrator must be a certified professional administrator. Although Ms. Reyes is a certified professional administrator, Mrs. Garcia is not a certified professional administrator. And because Mrs. Garcia is being detailed to serve as an assistant administrator at a public school, we informed GDOE that they are not in compliance with the law.

There appears to be a conflict between what the GDOE Rules and Regulations allow and what § 4 (12) (b) of the Act requires concerning who may serve as a public school administrator. I know you would agree that the Act must be followed despite GDOE's Rules and Regulations. However, this may be an area where an amendment to the Act may be necessary especially since GDOE Rules and Regulations allow for the detail assignments of GDOE personnel to serve as a school administrator even though any such individual detailed may not be a certified professional administrator. In addition, there may be times when GDOE may find the need to detail an individual to serve as a school administrator even though such person may not possess the proper certification.

I would recommend that any person who holds an acceptable certificate (determined by law or by the Superintendent), should be allowed to serve as an administrator on a temporary basis and for a limited period of time. If no reasonable exceptions are made to § 4(12) (b) each and every time DOE details an individual to serve as an Administrator or Assistant Administrator who does not possess the necessary qualifications, a violation of the Act would occur.

Please be advised that in order to come into compliance with the Act and until such time as there may be any exception to such provision of the Act, we recommended that GDOE either replace Mrs. Garcia with an individual who possesses a professional administrator certificate or in the alternative, have Mrs. Garcia serve in a capacity other than a school administrator.

**B. P.L. 28-45 § (d) – certified school health counselors (school nurse).**

My office recently received a reporting indicating that Simon Sanchez High School may not have an assigned school nurse. According to school officials, Simon Sanchez does not have a school nurse permanently assigned to the school but they do have a nurse who reports to their school. We found that Simon Sanchez is currently on a nurse rotation schedule where a school nurse from any number of designated schools is assigned to Simon Sanchez for specific period of time. However, when a school nurse from another may be assigned to Simon Sanchez, the other school is left without a school nurse.

P.L. 28-45 § 4 (12) (d) requires public schools to provide certified school health counselors. Currently, there are no exceptions to the law that requires public schools to provide a school nurse to each school. During a previous conversation we had on this matter, I recall discussing a possible solution to this issue that would allow for an EMT or other certified medical technician to provide certain medical services to the schools. I believe such an amendment or revision to the law may be necessary. According to DOE officials, there is a shortage of individuals applying for the position of school nurse. In addition, we found that

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<sup>1</sup> Rules or regulations, such as GDOE's Rules and Regulations are something that must be abided by some people such as all GDOE employees. A public law on the other hand, such as the Act, has to be abided by every person or entity subjected to such law or Act.

school nurse vacancies generally take some time to fill and unless the law is amended or revised, we may continue to see schools sharing nurses, which is a violation of the law. However, please understand that even if a school may have an assigned nurse, it is reasonable to believe that such nurse may be absent from school at any given time thus leaving the school without a school nurse resulting in a potential violation of the Act. Perhaps, the law should also be amended to indicate that a school nurse must be assigned to a school at the start of the new school year. Although the law may require each school to provide a school nurse, there are no consequences for failing to provide a school nurse.

C. P.L. 28-45 § 4 (12) (k) – certified librarian.

P.L. 28-45 § 4 (12) (k) requires libraries to be operated by certified librarians. However, every school does not have a certified librarian and certified librarians are in short supply. In addition, it is reasonable to believe that a librarian may be absent from work at any given time leaving the library without the required certified librarian. In one case, I found that one of the schools did not have a certified librarian operating the library and instead, a library tech was serving as the librarian for almost three years. I informed the Superintendent's office that they were not in compliance with the law and that a certified librarian must be provided immediately. To this date, the school still does not have a certified librarian and the library tech is no longer operating the library. I was recently informed that the library is currently being operated by a school aide. Although the Principal has requested for a librarian GDOE personnel division has indicated that there are no applicants for such position. Again, there are no consequences for failing to provide a certified librarian. If there were, perhaps GDOE would be more proactive in locating and securing a certified librarian.

As such, I would recommend that the Act be amended to allow a library tech, library aide, certified teacher, or others to operate the library in the absence a certified librarian especially for schools that do not have an assigned certified librarian. Any such individual however, should only be allowed to operate the library for a limited period of time.

D. P.L. 28-45 § 4 (12) (c) – certified guidance counselors.

P.L. 28-45 § 4 (12) (c) requires schools to provide certified guidance counselors. However, I have found that some individuals such as certified teachers, retired teachers, and even retired guidance counselors are serving as guidance counselors but are not certified as guidance counselors.

As such, I would recommend that the law be amended or revised to allow other persons who hold certificates to serve as guidance counselors such as certified teachers, certified administrators, retired teachers and/or retired guidance counselors, provided any such individual possesses a current certificate in their respective area. The main focus should be on providing the students with guidance and services as necessary that are being delivered from individuals competent to provide such services. I believe that certified teachers, librarians, and/or administrators could serve as guidance counselors in the event a school is struggling to secure a properly certified guidance counselor or when the certified guidance counselor may be absent for any extended period of time.

E. P.L. 28-45 § 4 (12) (a) – certified teacher for every class ....

P.L. 28-45 § 4 (12) (a) requires public schools to provide a certified teacher for every class in a ratio established by relevant collective bargaining agreements. My office often receives complaints reporting that a class is without a certified teacher. I have found that in many cases, a substitute teacher or school aide was filling in for the absent teacher. In some

instances, the assigned teacher would be long term leave such as military leave, medical leave, maternity leave or any other extended leave, resulting in the substitute teacher or school aide being assigned to the class for an extended period of time. I have found some classes that have had a substitute teacher or school aide assigned to the class for over a month or even longer. A class without a certified teacher for any period of time is unfortunate. However, a class without a certified teacher for an extended period of time becomes a more serious concern which must be addressed immediately.

As you may know, GDOE struggles every year to reach 100% certification of its teachers. In addition, we do not have a large pool of certified teachers on Guam available to fill in as substitute teachers at a moment's notice. Furthermore, it is reasonable to believe that the assigned certified teacher could be absent for various reasons often resulting in GDOE having to place a non certified individual place of the absent teacher. The law does not currently provide for any exceptions requiring a certified teacher in every class. And where a certified teacher is absent from the class, a violation occurs. There could be a potential for several violations to occur on a daily basis at all the different public schools whenever a certified teacher may be absent from the class.

I would recommend that the law be amended to allow for reasonable exceptions to such requirement especially since it is reasonable to believe that some teachers may be absent at any given time on any given school day, that some teachers will be called to serve military duty, that some teachers will take maternity leave, or any other circumstances that may require a certified teacher to be absent from their class for an extended period of time. If no reasonable exceptions are provided, we will continue to see complaints reporting classes without a certified teacher even if only for a day. I believe the law was created to address the difficulties and/or struggles DOE was encountering when trying to provide every class with a certified teacher. DOE must still work actively to recruit certified teacher but I believe that an amendment may be necessary to address the times when a class may be without a certified teacher for a short period of time. However, when a certified teacher may be out of the class for an extended period of time, DOE must provide a certified teacher to the class immediately. There should be consequences for failing to provide a certified teacher or acceptable replacement within 5 days after the certified teacher is absent from the class.

Combing of different classes into one class which is being taught by one certified teacher is a violation of the law. As you may know, various different classes at the FQ Sanchez elementary school have been combined and one certified teacher has been assigned to each of the combined classes. The Superintendent indicated that it has been the practice for many years at GDOE to combine classes when necessary. Please be advised that although GDOE may engage in such practice, the law requires a certified teacher for every class. However, if GDOE continues to engage in such practice, the law should be amended or revised to allow such practice.<sup>2</sup> Similar to the detail assignment issue mentioned above, GDOE's practice of combing two different classes/grade levels into one class with one certified teacher conflicts with § 4 (12) (a) and as such, either the law needs to be amended to allow for such type of practice, or in the alternative, the practice must not continue. If such practice is allowed to continue, I will continue to find that GDOE is not in compliance with the law accordingly.

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<sup>2</sup> An agency's practice is something that must be abided by some people such as certain GDOE employees. A public law on the other hand, such as the Act, has to be abided by every person or entity subjected to such law or Act.

Another recommendation would be to require any substitute teachers to possess the necessary qualifications (qualifications to be determined by law or by the Superintendent), that would allow such individuals to serve as substitute teachers in the absences of the certified teacher. If a substitute teacher possesses the proper qualifications, then perhaps the law could allow for such person to serve in place of a certified teacher. However, any such qualified substitute teacher should only be allowed to substitute for the absent certified teacher for a limited period of time.

Lastly, the law should be amended to provide that a violation of § 4 (12) (a) occurs where a class is not assigned a permanent certified teacher within the first 4 weeks of the class; a class is taught by an individual other than a certified teacher; a class is taught by a certified teacher who lacks the proper credentials to teach the subject matter; or a class in which more than 20% of the students are English learners has a certified teacher who lacks the proper qualifications to teach English learners.

FYI: I received a complaint from a parent reporting that the individual assigned to teach her child's class was not a certified teacher. During the course of my investigation, I found that the individual assigned to teach the class was a teacher but she was not fully certified and thus I informed GDOE that a certified teacher needed to be provided in the class. According to school officials, the individual was only partially certified because she failed to complete a particular portion of the requirements in order to be fully certified as a teacher. The school official also indicated that the parent referred to the Fourteen Points and demanded that a certified teacher be provided to the class immediately. The school was not able to provide a certified teacher immediately so the parent requested that her child be removed from the class and placed in a class with a certified teacher. Sometime after the complaint was filed, school officials informed me that the teacher was resigning from the school. However, I was not informed as to the reason for the teacher resigning. In my opinion, an individual who has a degree in teaching but who may not be fully certified as a teacher is a better alternative than having a school aide or substitute teacher who are not actual teachers. You may also want to consider amending the law to allow individuals who hold a degree. The law could provide which degrees would be acceptable or the Superintendent could make that determination before approval. Any such person chosen to serve in the place of the absent certified teacher should only be allowed to serve as the teacher for a limited period of time.

F. Amending P.L. 27-32 § 3. Privatizing Authority of Cafeteria and Facilities Maintenance and all other Services Vested in the Guam Education Policy Board.

Currently, the law prohibits GDOE from hiring new personnel to fill positions in the cafeteria and facility and the facility maintenance services. I believe this portion of the law should either be amended or revised to allow GDOE to hire new personnel for their maintenance service division. I have found that many work requests reporting maintenance problems in all the schools are generally not addressed within a reasonable time frame. I have found that some reported problems are not repaired for weeks or even months after the problem was previously reported. GDOE would generally indicate funding and procurement processes as issues inhibit their efforts to address the problems but they would also indicate that there is a lack of maintenance personnel needed to adequately address all the problems in all the schools on a daily basis.

During inspections of the schools with the various regulatory agencies and my office, several GDOE maintenance employees can be seen addressing and repairing problems as the regulatory agencies point out such problems. Please be advised that many of the problems corrected on the spot during the inspection may not always be problems that just occurred on the

day of the inspection but rather, many of the problems were previously reported by the school and are generally not addressed or repaired until an inspection occurs or just before the inspection occurs. Many school Principals often comment that when an inspection occurs or when an inspection is about to occur, that is when many of the problems are repaired. Perhaps an increase in the maintenance workforce may help to timely respond to work requests and , address and ultimately repair the problems long before an inspection occurs.

Although the 4 new schools have absorbed some of the students from the older schools, student population generally increases every year and is probably expected to increase in great amounts within the next few years. There are approximately 37 school buildings, not including the 4 new schools, each with their own cafeteria, there are thousands of classrooms, hundreds of restrooms , and various other areas or facilities that GDOE maintenance is responsible for maintaining. As GDOE maintenance employees retire, resign, transfer to other government departments or leave GDOE maintenance for various other reasons, the GDOE maintenance work force is steadily decreasing while the wear and tear on the school building increases.

With an increase in student population, especially in the next few years, the age of some of the schools, a reduction in GDOE maintenance personnel, and the inability to hire new GDOE maintenance services personnel, it is reasonable to believe that there would be a greater demand for GDOE maintenance personnel to address the many maintenance issues that arise in all the schools on a daily basis.

In addition, the law also states that a written report is required to be submitted to the Speaker on the feasibility and status of privatization of the cafeteria and facilities maintenance services. I would recommend that such provision of the law be enforced so that GDOE facilities maintenance services can be strengthened in order to ensure that the schools receive regular and steady maintenance including preventative maintenance.

G. Previously submitted recommendations for amendments/revisions:

1. 28-45 § 4 (12) (a) through (e) and (k) relative to certification. This recommendation in addition to the recommendations previously made for each particular section of the law would apply to all the positions that require certification. These sections of the law require that the respective positions be held and/or operated by individuals who are properly certified. Reasonable exceptions to these provisions may be necessary on the basis such individual[s] may not always be able to report for work and an acceptable qualified replacement may not be readily available to cover the position, which may result in GDOE having to use a non-certified individual to cover such position until the certified individual returns, (i.e., certified individual is on long term military leave, medical leave, maternity leave, jury duty, or any other long term or even on a short term absence) . As such, the absence of a particular certified individual, even perhaps for just one day, would cause a violation of the law and could potentially cause GDOE to be in violation of the law on a daily basis.

2. Room Temperature Amend/Revise P.L. 28-45 § 4 (12) (f). This section of the law requires the sensible air temperature of a classroom to be no greater than 78° F. I recommend that a range from 78 ° F to 84 ° F for classroom temperature be implemented instead of a set temperature as the law currently provides. Many, if not all of the temperatures measured in the classrooms registered above 78 ° F. Generally, where the air conditioning unit is working properly, the room temperature of the classroom registers anywhere from 80° F to 84° F. Anything above 84 ° F is quite uncomfortable especially with a room full of students on a hot

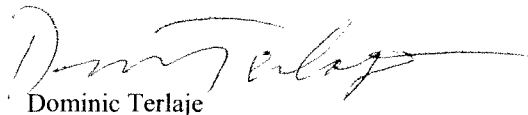
sunny day. In addition, the Department of Public Health and Social Services, Division of Environmental Health generally requires classroom temperature not to exceed 84° F.

As you know, our office investigates complaints about alleged violations of the 14 Points. Our office has the power to obtain necessary information for an investigation and to recommend corrective action if a complaint is found to be substantiated. In addition, our office has the power to inspect public schools and to make recommendations if discrepancies are found.

The Education Suruhanu serves as a neutral, independent intermediary between the citizen and GDOE. We conduct our investigations and inspections in a fair and impartial manner. We do not provide legal advice, nor do we serve as legal counsel, advocate, or representative on behalf of any person or agency. Fundamentally, the only real power the office has is the power to investigate. We may inspect public schools and subpoena testimony and documents as necessary to conduct investigations. At the conclusion of the investigation, we make findings and recommendations for corrective action, as appropriate. However, we have no power to enforce these recommendations or to compel GDOE or agency to take any corrective action, and instead, must rely on reasoned persuasion. Therefore, the findings, conclusions, and recommendations we make must be fair and reasonable, firmly grounded in fact, administratively sound, and in accordance with law. It is only when these conditions are met that our recommendations can be effective and persuasive. The stature of the office thus depends on the objectivity and high professional standards of work.

Thank you for your attention to this matter. If you have questions, please feel free to contact my office.

Respectfully yours,



Dominic Terlaje

cc:

Speaker, 30<sup>th</sup> Guam Legislature