DEPARTMENT OF EDUCATION
OFFICE OF THE SUPERINTENDENT

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JON J. P. FERNANDEZ
Superintendent of Education

October 5, 2017

The Honorable Eddie Baza Calvo
Governor of Guam
Ricardo J. Bordallo Governor's Complex
Adelup, Guam 96910

GL# 3447-1043
Speaker Benjamin J.F. Cruz

Honorable Benjamin J. F. Cruz
Speaker
Thirty-fourth Guam Legislature
Hagåtña, Guam 96932

OCT 06 2017
Time: 3:11 [ ] AM [ ] PM File No. 34-567
Received By:

Dear Governor Calvo and Speaker Cruz:

Håfa Adai! Pursuant to Public Law 31-233, Section 38, *Reporting Requirements for Boards and Commissions,* attached are electronic copies of the Guam Education Board's meeting agenda, approved minutes and other documents as discussed at the September 5, 2017 special meeting. The meeting was held at Superintendent's Conference Room, Building A., Tiyan.

Should you have any questions, please contact me at 300-1547.

Senseramente,

JON J. P. FERNANDEZ
Superintendent of Education

2017 OCT -6 PM 3:51 CS

Attachment
- E-Copies of GEB Meeting Packet

cc: GEB Members
Deputy Supt., FAS
File

1043

GUAM EDUCATION BOARD

500 Mariner Avenue
Barrigada, Guam 96913-1608
Telephone Number: (671) 300-1627
Facsimile Number: (671) 472-5001
Website Address: www.gdoe.net/geb

PETER ALECXIS D. ADA
Chairman

MARIA A. GUTIERREZ
Vice Chair

VOTING MEMBERS

Peter Alecxis D. Ada, Chairman
Maria A. Gutierrez, Vice Chair
Lourdes M. Benavente
Robert A. Crisostomo
James C. Lujan
Ronald L. McNinch, PhD
Mark B. Mendiola
Lourdes B. San Nicolas

EX-OFFICIO MEMBERS

Ernie Samelo (SHS)
IBOGS Representative

Audrey P. Mandapat (SSHS)
GFT Representative

Mayor, Rudy M. Matanane
MCOG Representative

EXECUTIVE SECRETARY

Jon J. P. Fernandez
GDOE Superintendent

Guam Education Board
Special Meeting
Tuesday, September 5, 2017
6 pm
Superintendent's Conference Room, Building A., Tiyan

AGENDA

I. Meeting Call to Order

II. Roll Call of Members

III. New Business

   a. Personnel Matters

IV. Executive Session

V. Adjournment

TB continued from page 1

tal administrators. Guam Memorial Hospital staff also screened 30 parents on Thursday as well, according to PeterJohn Camacho, chief executive officer of GMH.

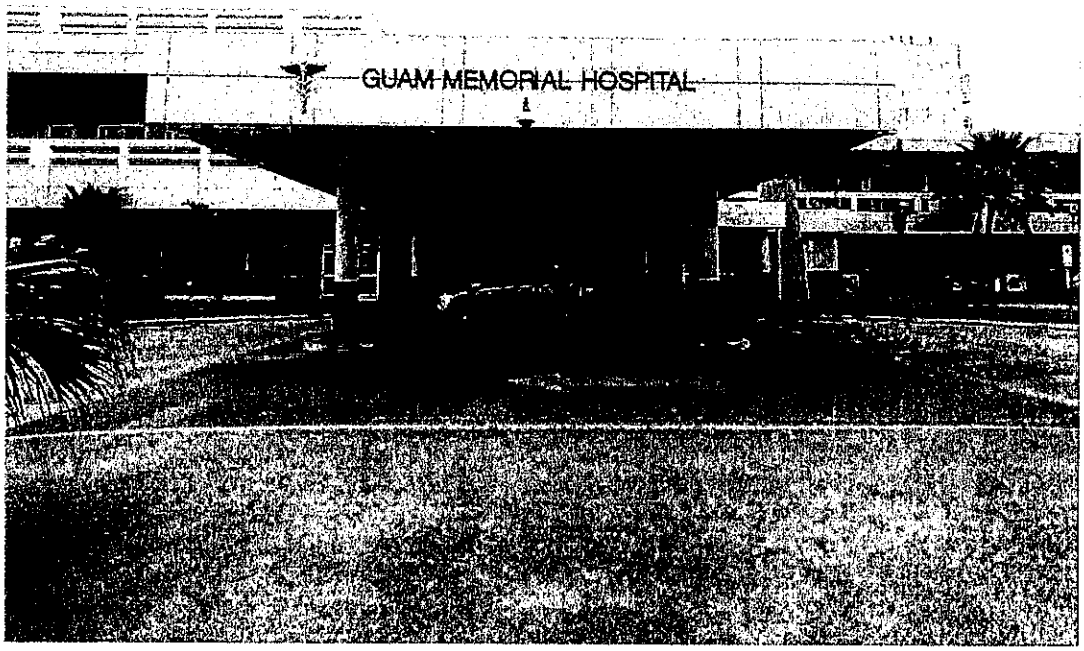
The public hospital and the island's public health agency are continuing to contact parents of the 311 total babies who were suspected to have been affected between April 1 and Aug. 8. But not all of the phone numbers listed in hospital records are valid, Camacho said.

The Department of Public Health and Social Services will start mailing letters to contacts whose telephone numbers were either not in service or otherwise could not be contacted by telephone. Parents whose contact number(s) changed can call the GMH switchboard at 647-2552-4 to verify if their babies are on the list of contacts who need to be screened, DPHSS stated in a release.

More info

For information regarding appointment scheduling for baby contacts, call the GMH switchboard at 647-2552/3/4.

For general information on TB, call the TB Control Program at 735-7131/7145 or go to www.cdc.gov/tb.



TB RISK: *Guam Memorial Hospital is shown in this file photo. Officials recently confirmed about 328 newborns and infants who stayed at the Guam Memorial Hospital nursery may have been in contact with a nurse who later was found to have active tuberculosis. Post file photo*

Camacho has said that the babies will be assessed and treated if necessary, and while parents have a right to see their private physicians, it is recommended that affected individuals be assessed and treated together.

Additionally, "the hospital will absorb the associated costs if the patient is seen and treated here at GMH," Camacho said.

Camacho has said chest X-rays may be required, as well as skin tests, to determine how many children and family members may have been infected.

Most people who are exposed to TB might be able to keep the infection inactive or latent. However, children below the age of 5, or people with diabetes or other immunosuppressive conditions may not be able to keep the infection under control and are at higher risk of developing active tuberculosis within a few months or up to two years after the exposure. Close monitoring of all exposed individuals, particularly newborns, for any sign of active TB is recommended, DPHSS has stated.

For information regarding appointment scheduling for baby contacts, call the GMH switchboard at 647-2552/3/4. For general information on TB, call the TB Control Program at 735-7131/7145 or go to www.cdc.gov/tb.

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GMHA'S ABOVE STEP
Recruitment Request
Carlos Pangelinan
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Please refer to GMHA'S website for more information or call GMHA'S Human Resources Office at 647-2219.

ATTENTION CUSTOMERS
Our office will be closed on
Monday, September 4, 2017 in observance of
Labor Day.
We will resume regular business hours on
Tuesday, September 5, 2017.

EARLY AD DEADLINES

PUBLICATION DATE:	DUE DATE:
Monday, September 4, 2017	Wednesday, August 30, 2017 @ 12 Noon
Tuesday, September 5, 2017	Thursday, August 31, 2017 @ 12 Noon

Please feel free to call our office or send us an email if you have any questions. Thank you.
Call: 649-1924 or Email: advertise@postguam.com
THE GUAM DAILY POST

GUAM EDUCATION BOARD
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Website: www.gdoe.net/geb
PETER ALEXIS D. ADA Chairman
MARIA A. GUTIERREZ Vice-Chairperson

PUBLIC NOTICE
Guam Education Board
SPECIAL MEETING
Tuesday, September 5, 2017
6:00 PM
Superintendent's Conference Room, Building A., Tiyan

AGENDA
I. Meeting Call to Order
II. Roll Call of Members
III. New Business
a. Personnel Matters
IV. Executive Session
V. Adjournment

Individuals requiring special accommodations or information may contact Leilani Cruz, Administrative Officer at 300-1627 or by email: lmbcruz@gdoe.net.
This advertisement was paid by GDOE local funds.

PETER ALECXIS D. ADA
Chairman

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EXECUTIVE SECRETARY

Jon J. P. Fernandez
GDOE Superintendent

GUAM EDUCATION BOARD
SPECIAL MEETING
Tuesday, September 5, 2017
6 pm
Superintendent's Conference Room, Building A., Tiyan

MINUTES

I. MEETING CALL TO ORDER

Mr. Peter Alecxis Ada, Chairman, called the meeting to order at 6:00 p.m.

II. ROLL CALL OF MEMBERS

Mr. Jon J. P. Fernandez, Superintendent and Executive Secretary, took the roll call. The following members were present for the meeting:

Voting Members:
Ada, Peter Alecxis D.
Benavente, Lourdes M.
Crisostomo, Robert A.
Lujan, James C.- via tele-conference
McNinch- Dr. Ronald L.
Mendiola, Mark B.
San Nicolas, Lourdes B.

Non-Voting Members:
Samelo, Ernie – IBOGS representative
Matanane, Rudy M. - Yigo Mayor and MCOG education liaison

Absent:
Gutierrez, Maria A.- Vice Chair
Mandapat, Audrey P. (SSHS) - GFT Representative

The Superintendent announced that there is a quorum. *(By law, five voting members constitute a quorum. Seven (7) voting members were present for this meeting.)*

Present for the meeting: Attorney General Elizabeth Barrett-Anderson, Deputy Attorney General Kenneth Orcutt, Deputy Attorney General Fred Nishihura.

Attorney General stated that it's their recommendation that it's not necessary to go into executive session; executive session is something they would call. She explained that she does want to go into executive session for other business, but if it's for the business that they are there for, they don't recommend executive session.

Mr. Mendiola explained that the Board put "personnel matters" on the agenda. In the event they decide to go into executive session they can after the presentation from the Attorney General.

III. New Business

1) Personnel Matters

Attorney General Barrett Anderson mentioned that they are here to talk about the current litigation still pending for the district court in the matter of Mr. Fernandez versus the Board of Education and Board of Education members in their personal capacity. She stated that she wants to make this very clear -- so that there are no ethical issues – that Mr. Fernandez is present. They are not directing these matters to Mr. Fernandez but to the Board itself and as counsel for the Board.

She stated that she recommended to the Board that they discuss this in open session. She explained that they will not discussing litigation strategies or the litigation itself. They can inform the Board as to the status of litigation.

She mentioned that it's been a couple of months now since the Board has indicated to the AG's office that they do want to resolve this matter and move forward and settle the matter; that's their prerogative and right as the client. She further mentioned that they filed their appropriate motions to keep the litigation case going forward. She explained that the settlement has two parts.

1. The ability of the Board to satisfy a financial request in the settlement.
2. The legal aspect of the settlement (Deputy Orcutt will give the details).

She reported that they did send an offer of settlement to the opposing counsel sometime in April 2017, and they had not heard anything back until last week.

Deputy Orcutt reported that the court set a hearing for September 22, 2017, 9 am to consider the pending motions that have been filed, both on behalf of the individual defendants and on behalf of the individual defendants and their official capacity.

The court is going to hear those motions unless they come back and inform the court at a status hearing that is currently set for September 7th and indicate that they settled the case. At this point, they do not have a settlement and discussions have gone back and forth formally and informally on what a settlement would look like.

He explained that under Guam Law, Section 1820, there is a general requirement that settlements must be approved by the Guam Legislature and there are exceptions to that. He further explained that Mr. Fernandez has filed a federal civil rights lawsuit in federal court and any settlement of that claim would have to be approved by the Guam Legislature. In terms of discussions regarding settlement, questions like... Maybe you can take the indemnification clause that exists in the contract between Mr. Fernandez and the Guam Education Board can use that as a basis to pay attorney fees, and that, therefore, this can somehow void the legal requirement that the Guam Legislature approving his settlement. He mentioned that they looked at that and thinks that is a bad idea for several reasons: (1) The provision of the contract for identification is really designed to protect Mr. Fernandez from claims of third parties against him where he might have to hire an attorney to defend himself. In this particular case, what they have is Mr. Fernandez himself bringing a lawsuit against the Board. They don't think that, that provision allows for the payment of Mr. Fernandez's attorney fees. (2) Any type of settlement agreement, if they

avoid the settlement of the federal case and did not mention anything about paying Mr. Fernandez's attorney's fee, they'd be circumventing the law. In fact, the settlement that is being contemplated would indeed pay his attorney fees. He doesn't think they can avoid the statue 1 GCA, 1820, requiring legislative approval simply by omitting that from the settlement agreement and having some kind of a side deal by which Mr. Fernandez will use as attorney fees. (3) Concerns for the Board members individually. Under Guam law, if you pay someone against when the law doesn't allow it because there's no appropriation or if it's contrary to the law, in this case would be to get the Guam Legislature's approval, then you yourselves will be found personally liable for this illegal payment. (5 GCA, Ch. 7)

He stated that they can't sit there tonight and tell them they have a settlement agreement. They can advise the Board of simply going forward tonight and trying to say well they authorize some kind of payment of attorneys fee under the contract that Mr. Fernandez had with the Guam Education Board. He stated that that is the concern he wanted to relay to the Board.

Dr. McNinch asked if it would be possible to get a second opinion. Attorney General responded that she is the elected Attorney General, Chief Legal Officer of the Territory and that is her position here is that they do not have the settlement. If they can reach a settlement, that resolves the lawsuit completely and her objective is to have the lawsuit dismiss. If it can resolve the remaining financial issues that the Board wants to resolve as well then they have a settlement. Case is resolved in their official, individual capacities, and resolution of some financial concerns but we're not at that point right now.

With regard to Dr. McNinch's questions, she stated that a second opinion, she's doesn't think it's appropriate.

Mr. Crisostomo wanted to clarify being that the Board individually can be held liable if they went ahead and paid. The discussion the Board had was moving in that direction but what the Attorney General recommendation tonight is that the Board doesn't have a settlement because they don't have legal authorization to payout Mr. Fernandez's attorney's fee. He asked if that's correct.

Deputy Orcutt responded that it's close to being correct. He stated that they have not agreed on a mechanism by which the attorney's fee can be paid. They believe that the legislature has to approve the settlement. If the legislature approves it then we have a settlement. So far, the plaintiffs are not willing to do that.

Attorney General mentioned that if they could reach a settlement where it's a settlement that in her opinion is comprehensive to resolving the case, she would like to see a complete dismissal of the case, a resolution by a financial mechanism that then must still go to the Guam Legislature.

Deputy Orcutt mentioned that it's 45 days for the legislature to approve it if they don't then it automatically not approved. They have to act on it.

Mr. Mendiola mentioned that the way he understood it was September 7th is the status hearing whether or not they reach the settlement terms.

Mr. Mendiola asked Deputy Orcutt that earlier he mentioned that he gave some settlement terms to the opposing counsel. He asked if they responded back.

Deputy Orcutt mentioned that on Friday, he received a draft proposed settlement agreement that wasn't consistent on what was previously talked about.

Ms. San Nicolas asked if there was any communication between your office and the Speaker of the Guam Legislature to come up with a mechanism as to how that could look like if it were approved or the legislature coming with a funding source.

Attorney General responding that that's not the role of their office. Their office is to try to reach an acceptable settlement that will resolve the entire case upon the signatures, her signature on the settlement which means she is accepting this for the government that it is an approved settlement that then should go down to the legislature and ask the legislature for approval.

Mr. Mendiola mentioned to the Attorney General that he did communicate with the Speaker of the Guam Legislature to let him know that this is something that their contemplating after they had a discussion on contractual issues. If they decide to go to the legislature, they are going to need an opinion from them.

Attorney General responded that they need a settlement that she signs off on. The settlement that she signs off on will be that settlement that is agreed on by her office and the opposing counsel.

Dr. McNinch asked what's the best way they can expeditiously resolve this.

Attorney General responded that whenever there is litigation and a resolution it really is that effort between the opposing counsels on behalf of their clients to come together with a resolution agreed upon by the clients through them.

Mr. Crisostomo asked what are you recommending the Board do.

Deputy Orcutt responded that they don't have a settlement agreement to even propose a workable one that would comply with the law. They need time to work with the opposing counsel and see if they can work something out and if they get to that point, they can try and reconvene before September 22, 2017.

Chairman Ada stated that he did write a letter to the Speaker and copy to Senator San Agustin requesting approval from the Legislature to proceed on and that the funding will be appropriated to the Guam Education Board.

Dr. McNinch asked how much this has cost the government from the AG's side in terms of cost of the specific set of litigation

Mr. Crisostomo moved, seconded by Ms. Benavente, to go into executive session. The Board voted by voice 7-0.

Mr. Mendiola asked if they have to recording all executive sessions.

Deputy Nishihira read 5GCA §8111, (a) Executive session.

The Board voted by voice 7-0 in favor of the motion.

IV. Executive Session

The Board moved into Executive Session at 6:31 p.m.
The Board at 7 p.m. went into Public session.
Mr. Mendiola moved, seconded by Mr. Lujan, to rise out of executive session. The Board voted by voice 7-0.

V. Announcements & Adjournment

Mr. Mendiola moved, seconded by Ms. San Nicolas move to recess the meeting at the call of the Chairman. The Board voted by voice 7-0 in favor of the motion.

MINUTES SUBMITTED BY:

LEILANI M. B. CRUZ
Administrative Officer

Date: 9/28/17

MINUTES OF September 5, 2017 SPECIAL MEETING:
( ) Approved as submitted
( ) Approved subject to corrections
( ) Other: _____

MARIA A. GUTIERREZ
GEB Acting Chairwoman

Date: 10/3/17

JONU P. FERNANDEZ
Executive Secretary/GDOE Superintendent

Date: 10/2/17