DEPARTMENT OF EDUCATION
OFFICE OF THE SUPERINTENDENT

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JON J. P. FERNANDEZ
Superintendent of Education

December 22, 2017

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

GU# 3418-1361
Speaker Benjamin J.F. Cruz

JAN 0 2 2018

Time: 1005 [ ]AM [ ] PM File No. _____
Received By _____

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

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 October 27, 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.

2018 JAN -2 AM 11:38

Senseramente,

JON J. P. FERNANDEZ
Superintendent of Education

Attachment
- E-Copies of GEB Meeting Packet

cc: GEB Members
Deputy Supt., FAS
File

1361

MARIA A. GUTIERREZ
Chairwoman

GUAM EDUCATION BOARD

500 Mariner Avenue
Barrigada, Guam 96913-1608
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MARK B. MENDIOLA
Vice Chair

8th GUAM EDUCATION BOARD
SPECIAL MEETING
Friday, October 27, 2017
6 pm
Superintendent's Conference Room, Building A., Tiyan

VOTING MEMBERS

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

MINUTES

I. MEETING CALL TO ORDER

Mrs. Maria A. Gutierrez, Chairwoman, called the meeting to order at 6:00 p.m.

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

Non-Voting Members:
Matanane, Rudy M. - Yigo Mayor and MCOG education liaison*

Absent:
Mandapat, Audrey P. (SSHS) - GFT Representative – Excused
Samelo, Ernie (SHS)- IBOGS Representative- Excused

**Arrived after roll call*

Eight (8) Board members were present, constituting a quorum.

Vice Chair Mendiola stated for the record that a representative for the IBOGS and Mayor's Council were present at the work session.

II. New Business

a. Personnel Matters

Vice Chair Mendiola acknowledged the presence of Deputy Attorney Orcutt and Deputy Attorney Fred Nishihira.

Mr. Orcutt, Deputy of the Litigation Division for the Office of the Attorney General of Guam, introduced himself and his colleague, Mr. Nishihira, Deputy of the Consumer Division for the Office of the Attorney General of Guam.

He stated that he delivered a proposed settlement resolving the litigation brought by Mr. Fernandez against the Board and against individuals in their official capacity. He recommended that the Board approve the settlement and if they approve the settlement there are certain contingencies that have to be made under the settlement agreement. He further mentioned that one of those is that the Guam Legislature would have to approve the settlement within 45 days after submission to the Legislature or. under Guam law, the settlement will be deemed disapproved.

He mentioned that the first signatory on the proposed settlement would be this Board. He commented in order to have full settlement of this matter, submitted to the Legislature, and is subject to the approval of the Attorney General of Guam and the Governor of Guam. He stated that if the Board decides to approve this propose settlement, they do not foresee any problem with the Attorney General or the Governor adding their signatures to the agreement. He mentioned that he believes that Mr. Fernandez will have no disagreement with the proposed settlement.

He stated that under the proposed settlement are the terms that the Government of Guam will pay $60,000 to reimburse Mr. Fernandez for attorney's fees and also has a provision in the settlement agreement that will require their cooperation in joining Mr. Fernandez in trying to seek to have a court order to expunge one the reports that were submitted as part of the evidence in the preliminary junction hearing before the District Court of Guam.

He stated that there are other parties in this lawsuit who have been sued in their individual capacity, the proposed settlement agreement does not deal with those claims and to his understanding, and they are working on disposing of those claims through a separate settlement agreement.

He continued that the proposal before the Board would resolve the litigation between Mr. Fernandez and the Board as legal entity and also the individually named Board members former and past were sued in their official capacity which under the law is treated also as a lawsuit against the Government of Guam as opposed to a lawsuit against the individual actually named.

Vice Chair Mendiola moved, seconded Mr. Lujan, approve the settlement agreement, Jon Fernandez vs. Guam Education Board District Court civil case CV-1600080.

Mr. Crisostomo asked about the 45 days the Legislature has to approve the settlement and timing is critical. He continued that this refers only to the Board and will be resolved for the Board only. The individual members have to pursue their own resolution. He assumed, therefore, that the Board no longer has a link with any action associated with the lawsuit. Deputy Orcutt responded correct, if the matter goes through and the Legislature approves; another option is that the Legislature can simply amend the law or repeal it.

Mr. Crisostomo stated that he was concerned and stated that he is looking at the worst-case scenario and the Legislature fails to approve, where are they at that point? Deputy Orcutt stated that the lawsuit is reactivated and it would move forward in the usual course of litigation, the court will set a trial date and go forward.

Deputy Orcutt responded that the litigation is reactivated and they can still try to resolve the case, but if the Legislature does not approve payment of any money that is not going to be on the table as part of a possible resolution of the matter.

Vice Chair Mendiola commented that they had 60 day notice status hearing to have the Board consider his settlement agreement. He stated that they met during the settlement agreement discussion about the issue where they have to go through the legislative process. He commented that he met with the speaker of the legislature at the request of the Board to let him know that there will be a proposal forthcoming, and the Speaker said that the Legislature will not be able to act until they have this document. He stated that after the Board approves the settlement and gets the other signatures to send down to the Legislature, a cover letter will highlight that there is a 45-day window during which they would need to take action. He stated that the Legislature goes into session on a monthly basis.

Mr. Crisostomo stated that they are asking for an authorization from the Legislature because the authorization to pay the settlement is not in the law. He stated that they have $60,000 sitting in the Board account to hire a lawyer. The Senators might bring up the question where will the money come from because the government is strapped already. He mentioned that they might say that there is $60,000 sitting in your account and they give authorization to take it out of your account.

Deputy Orcutt responded that the Guam Code Annotated 1820 requires the approval of the Guam Legislature or a specific appropriation for that client. The legislature has a choice and once they do that then you are authorized to pay the settlement. He further stated that one of the ways the settlement could work if you got that approval is you could enter into a judgement of $60,000. Mr. Fernandez would have to collect from that judgement. He commented that the settlement requires payment before dismissal of the case.

Mr. Ada asked that the money must be appropriated to the Board of Education not to the Department of Education specifically to the Board. If the Board should approve the settlement, it does not include the others who were sued in their individual capacity.

Deputy Orcutt stated that the individual defendants have their own attorney and they are seeking to resolve the claims through their attorneys. He continued that there is no global settlement and that a settlement document involving a government agency is a public document and there may be tactical reasons the attorneys represented the individual defendants may not want to be a part of the global settlement here.

Dr. McNinch suggested to hand the settlement to the Guam Legislature and move on to serve the young people and children of this island.

Ms. San Nicolas stated that they were talking about two different groups and Deputy Orcutt is dealing with the Board as a whole. She commented that the Board should not worry about the other parties.

Deputy Orcutt stated that the document still needs the signature of the Attorney General, Mr. Fernandez, and his attorney. He suggested that the Board give him the original and he will submit it to Mr. Fernandez's attorney and when it is signed, then he will route it to the Attorney General and the Governor.

The Board voted by roll call and approved the motion with a vote of 8-0 (Yeas: M. Gutierrez, M. Mendiola, P. Ada, L. Benavente, R. Crisostomo, J. Lujan, R. McNinch, and L. San Nicolas). The motion passed.

III. Unfinished Business

a. BRIP

Vice Chair Mendiola stated that finance subcommittee met about the BRIP issue and they allowed the department more time to look at the teacher list and to provide categories of those affected by BRIP.

He commented that the last Board meeting he made a motion to address the issue of the deadline and he did it. He mentioned that they are going to give the department the opportunity to come back to the Board with actual dollar figures and other information that was requested by the committee. He further stated that once that is completed he will make a recommendation to the Board for action. He commented that this is moving along and they are progressing with input from stakeholders and committee members.

Mr. Ada recommended holding the next session after school hours to allow teachers to participate.

Vice Chair Mendiola mentioned that the next work session will invite those who are affected by BRIP to participate.

b. Bill 190-34 & 191-34

Vice Chair Mendiola stated that there was an executive meeting that pertains to Bill 190-34 that pertains to make up of the Board, voting members versus non-voting members and some changes in the legislation.

He mentioned that he had a discussion with one of the Board members, had an opportunity to speak with 4 IBOGS representatives, Mayor Matanane and a representative from GFT were also present. He stated that they decided to give representative bodies the opportunity to gather information and data and to prop for their thoughts on the bill. He mentioned that when it comes to DOE, he will ask the superintendent if there are issues on the bill based on technical questions of the bill that need to be answered especially when it deals with students. He commented that the mayors' representative on the Board has a constituency that he has to answer to and the time is sometimes not conducive to some of the activities that occur. He commented that they had a good discussion and when the hearing does come out they can render a testimony either for or against and that the superintendent will offer comments and reviewed by the Board then he will make the presentation on behalf of the Board to the Legislature. He mentioned if there are any issues or concerns to send an email and it will be incorporated into the testimony for the Legislature.

Mr. Ada stated that he was not sure about the quorum number. The quorum calls for five and should be increased by a set number.

Chairwoman Gutierrez responded that the bill is not clear and that was one of the discussions. She continued that is why during the testimony they need to ask

because it does not address the quorum. She stated that the bill needs a lot of cleaning and the superintendent will be preparing the testimony. She suggested sending in their input so it will be in black and white.

Vice Chair Mendiola responded that there are a lot issues with the mechanics of how the bill is going to work. He mentioned that as a Board, they will send information to the superintendent to capture what they all have stated to include in the testimony.

Vice Chair Mendiola stated that in regards to bill 191, the Board is adamant about separating and that is the position they instructed the Superintendent to take. The Bill tries to put more responsibility on the department. He mentioned that they asked superintendent to strongly word a document that if they are going to give an oversight to give a complete oversight if not, then separate us and provide the funding source for the charter schools to operate so they can provide the services to their students. He stated that there was a round table discussion on Monday and two Board members were present to state the position of the Board. He commented that one of the issues is that they are tied to them because of the budget yet they have no oversight if there are issues with their spending of the funds. He asked who has the ultimate responsibility to call charter schools to answer some questions. He stated that they have the superintendent who will continue to support them, but they have to have a clear deviation. He mentioned that the superintendent has to deal with 41 schools then he has to cut away to deal with the charter schools.

Mr. Crisostomo stated that they are tied to the charter schools. If the Board decides to pass a policy directing the superintendent not to issue any funds to the charter schools until reconciliation of previous expenditures is done. He asked if that will fix the problem immediately until they can get resolution on the law whether they take full oversight or complete severance to severe the relationship with charter schools. He mentioned that the policy on the Board can direct the superintendent not to comply with the disbursement of funds to charter schools because of questionable expenditures. He commented that the Board has to do their due diligence in protecting the department and they only they can do is a policy. He stated to have the Board direct the superintendent not to disburse any funds and let the legal people figure that out.

Dr. McNinch commented that he wants to break away from charter schools. He stated that charter schools are resource on the rest of the Department of Education and those are unaccounted for costs. He mentioned that every time the superintendent has to waste his time dealing with school board drama from the charter schools that is time that 30,000 young people are denied the primary leader of their organization's attention. He stated that it is unfair to the Board, to the superintendent and school children.

Chairwoman Gutierrez stated she was bothered when she was reading the bill on sections 4 and 5 where clerical and administrative support to include the executive director. She disagreed and stated that they should take the budget out of the two charter schools and pay for clerical support and executive director. She stated that they do not have control or authority over the charter schools and that is what the proposed bill is showing.

Mr. Ada noticed a pattern that they submitted a payment and have unresolved billing that needs to be rectified. He stated that they should stop them now and direct the superintendent because the Board is responsible for the budget and should take action.

Mr. Crisostomo stated that the Board should take action and create a policy directing the superintendent to not act anymore on requisitions or request for money or funds from the Department of Education until prior reconciliation is completed from any expenditures from prior months. He mentioned that the Superintendent will not disperse any additional funds if any of the charter schools have outstanding unreconciled expenditures. He commented that the department is going to be held liable because funds come from the department; therefore, the Board becomes culpable.

Mr. Crisostomo moved, seconded Mr. Ada, for the Board to develop a policy that will direct the Superintendent to cease payment of funds that are not validated to the charter schools.

McNinch stated that he agrees, but another approach is to declare a fiscal emergency related to how finances are being handled. He commented that if the Board declares fiscal emergency and they want immediate action from the right people that might be easier to explain and sell to the public.

Superintendent Fernandez stated that the laws set out parameters on how charter schools are funded. He mentioned that it does not put them in the role of dispersing funds it actually only puts them in the role of validating funds. He commented that funds are already set aside by the Department of Administration. He stated that DOA will not disperse cash until GDOE completes the process of validation. He suggested that the Board communicate with the OPA, the Attorney General, or Governor's Office. He stated that the department and the internal audit office is not validating any expenses that cannot be supported by documentation and evidence of compliance with applicable laws and regulations.

Mayor Matanane stated that he represents the students at charter school. He commented that they think about the kids, talk, and find out a better way to solve this problem.

Vice Chair Mendiola commented that resources are taken from the other 41 schools and those school children are being short changed as well. He agrees with the motion and they need to make sure that they do things accordance to the law and to ensure the school continues to operate.

Superintendent Fernandez stated that this issue is directly related to students. He mentioned that if the students from charter schools want to have a charter school to go to, they have to have charter schools that are able to be financially sustainable. The issues that have been identified put the charter school at risk. He commented that if they want to see them to succeed at all, they need to be assured that they have are stable and sustainable financially.

Ms. San Nicolas suggested that when Crisostomo appears at the round table that the message is clearly stated that this Board of Education wants to sever financial responsibilities from the charter schools.

The Board voted by roll call and approved the motion with a vote of 8-0 (Yeas: M. Gutierrez, M. Mendiola, P. Ada, L. Benavente, R. Crisostomo, J. Lujan, R. McNinch, and L. San Nicolas). The motion passed.

IV. Executive Session-

The Board took at 5-minute break

The Board moved into Executive Session 7:02 p.m.

The Board at 7:28 p.m. went into Public session.

Vice Chair Mendiola moved, seconded Ms. Benavente, to rise out of executive session. The Board voted by voice and approved the motion with a vote of 8-0. The motion passed.

Vice Chair Mendiola moved, seconded by Ms. Benavente, to create an Ad-hoc Committee to address Board matters.

Chairwoman Gutierrez stated that the Board policy states that the chair can appoint a special committee or Ad-hoc committee. She asked for volunteers. Mr. Crisostomo, Dr. McNinch, Ms. San Nicolas, and Mr. Ada volunteered.

The Board voted by voice and approved the motion with a vote of 8-0. The motion passed.

V. Adjournment

Mr. Mendiola moved to adjourn the meeting at 7:31 pm.

MINUTES SUBMITTED BY:

LEILANI M. B. CRUZ
Administrative Officer

Date: December 21, 2017

MINUTES OF OCTOBER 27, 2017 SPECIAL MEETING:
( ) Approved as submitted
( ) Approved subject to corrections
( ) Other: _____

MARIA A. GUTIERREZ
GEB Chairwoman

Date: 12/28/17

JON J. P. FERNANDEZ
Executive Secretary/GDOE Superintendent

Date: 12/22/17