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CH. 11 EDUCATION SURUHANU (OMBUDSMAN)

CHAPTER 11
OFFICE OF THE ADEQUATE EDUCATION SURUHANU (OBUDSMAN)

SOURCE: The entire Chapter was added by P.L. 29-019:82:17 (Sept. 29, 2007) and amended in its entirety by P.L. 29-041:7 (Oct. 26, 2007). Sections were originally numbered by P.L. 29-041 as §§ 1100-1113, which were already occupied by Chapter 1 of this Title. Therefore, sections were renumbered to §§ 11100-11113 by Compiler.

2009 NOTE: P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name of the Guam Public School System to the Department of Education. References to Guam Public School System have been changed to Department of Education pursuant to P.L. 30-050:3.

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§ 11100. Creation of Office.

The Office of the Adequate Education *Suruhanu* (hereinafter referred to as the 'Education *Suruhanu*') is hereby established as an independent entity of the government of Guam. It is operationally independent from *I Maga'lahaen Guåhan, I Liheslaturan Guåhan*, the Department of Education (DOE) and the Guam Education Policy Board (Board). *I Maga'lahaen Guåhan, I Liheslaturan Guåhan*, DOE or the Board shall not prevent, impair, or prohibit the Education *Suruhanu* from initiating, carrying out, or completing his duties. The Education *Suruhanu shall* be the head of the office.

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§ 11101. Qualifications.

(a) The Education *Suruhanu* shall be a person of judgment, objectivity and integrity who can analyze problems of law, administration and public policy.

(b) No Education *Suruhanu* shall:

- (1) engage in political party activities;
- (2) be a candidate for or hold either elective or appointive public office;
- (3) engage in any other occupation, business or profession; or
- (4) be a former or current employee of DOE or be a member of the Board within two (2) years of that individual's period of service.

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

- (1) be a citizen of the United States and a resident of Guam;
- (2) be an active member in good standing of the Guam Bar Association on Guam for at least two (2) years;
- (3) not have been convicted of a felony; and
- (4) not have been suspended from the practice of law in any jurisdiction for violation of ethical rules governing the practice of attorneys.

§ 11102. Removal and Termination.

(a) The Education *Suruhanu* may only be removed from office for cause as described in Subsection (b) of this Section within the three (3) year appointment by *I Maga'lahaen Guåhan*, who must then report the reasons for the removal to *I Liheslaturan Guåhan* within twenty-four (24) hours.

(b) Only the following are cause for termination:

- (1) holding financial interests that conflict with the conscientious performance of his duties;
- (2) engaging in financial transactions using confidential or non-public DOE information or allowing the improper use of such information to further any private interests;

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(3) solicitation *or* acceptance of any item of value from any person *or* entity seeking official action from, doing business with, *or* conducting activities regulated by DOE, *or* from persons whose financial interests may be substantially affected by the performance of the Education *Suruhanu* 's duties *or* the functions of DOE;

(4) knowingly making commitments *or* promises that purport to bind DOE, except as permitted by law;

(5) using his position for his private gain *or* that of others;

(6) failing to disclose waste, abuse and corruption to the appropriate authorities;

(7) failing to respect the rights and privacy of others and using his position *or* authority to injure another person for personal reasons *or* malicious purposes;

(8) committing fraud *or* misrepresentation in securing his appointment;

(9) refusal *or* failure to perform duties mandated by law;

(10) unlawful use, possession *or* sale of illegal drugs and alcohol;

(11) criminal acts involving moral turpitude;

(12) political activity prohibited by law;

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

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

(15) abandonment of his position.

§ 11103. Appointment.

I Maga'lahaen *Guåhan* shall appoint the Education *Suruhanu* with the advice and consent of *I Liheslaturan Guåhan*. The Education *Suruhanu* shall be appointed for a term of three (3) years.

§ 11104. Salary.

The salary of the Education *Suruhanu* shall be at the rate of Eighty Thousand dollars (\$80,000.00) per annum. The Education *Suruhanu*'s salary shall not be reduced during his term of office except as part of a

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government-wide reduction of salaries of all elected officials and appointed officers of the government of Guam. The Education *Suruhanu* may participate in any employee benefit or retirement plan available to government of Guam employees.

§11105. Powers.

The Education *Suruhanu* shall have the following powers:

(a) To investigate any complaints of a person pursuant to Public Law 28-45, 'Every Child is Entitled to an Adequate Public Education Act'.

(b) To enact, amend and rescind rules and regulations, pursuant to Title 5 GCA Chapter 9 (Administrative Adjudication Law), and in consultation and with the approval of *I Liheslaturan Guåhan*, required for the discharge of his duties, including procedures for receiving and processing complaints, conducting investigations and reporting his findings, provided that he *shall* not charge fees for the submission *or* investigation of complaints.

(c) To examine the records and documents privileged from inspection because of their confidential nature, but only after a confidentiality agreement has been executed between the Superintendent of Education and the Education *Suruhanu*.

(d) To enter and inspect without notice the premises of any DOE school, office, or facility.

(e) To subpoena any employee or agent of the government of Guam to appear and give sworn testimony or to produce documentary or other evidence that is material to an inquiry.

(f) To administer oaths and affirmations to witnesses.

(g) To undertake, participate in *or* cooperate with persons and agencies in such conferences, inquiries, meetings *or* studies as might improve compliance with Public Law 28-45.

(h) To obtain such information and make such inquiries from any agency *or* person as required to discharge his duties.

(i) To maintain confidentiality with respect to all matters and the identities of the complainants *or* witnesses coming before him.

(j) To strengthen procedures and practices that lessen the risk of

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objectionable administrative acts.

(k) To investigate, on complaint of a person of any actions or inactions not included in the “Fourteen (14) points” of Public Law 28-45, but may however impede the delivery of an adequate public education.

§ 11106. Rights of Complainant - Communication with Complainant.

(a) When the Education *Suruhanu* receives a complaint, he *shall* so inform the complainant in writing that the complaint will be investigated within twenty (20) working days and *shall* specify the date in which the investigation shall be completed.

(b) The Education *Suruhanu shall*, within five (5) days after completing an investigation, inform the complainant of his conclusion *or* recommendation in writing and, *if* appropriate, any action taken *or* to be taken by the agency involved.

(c) If the complainant has not received the Education *Suruhanu*'s conclusion or recommendation within ten (10) days of the completion date specified pursuant to sub part (a) the complainant may bring a mandamus action to compel the Education *Suruhanu* to perform.

§ 11107. Investigation of Complaints.

(a) The Education *Suruhanu shall* investigate every complaint alleging that an agency's action is:

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

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

(3) inadequately explained *or* justified when the reasons for said action should have been revealed;

(4) inefficiently performed; *or*

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

(b) The Education *Suruhanu* may decide *not* to investigate a complaint because:

(1) the complainant should pursue another legal remedy, provided that the Education *Suruhanu shall* instruct the complainant in writing

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as to how to proceed;

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

(3) the complaint is over one hundred twenty (120) days old, since the act or inaction was alleged to have occurred; and

(4) the Education *Suruhanu's* resources are insufficient for adequate investigation, in which he *shall* notify the complainant in writing and shall refer the complaint to the proper legislative committee for investigation.

(c) If the Education *Suruhanu* declines to investigate a complaint, he may nevertheless review on his own initiative agency actions not included in the complaint that come to his attention.

(d) The Education *Suruhanu* shall have twenty (20) working days to investigate a complaint filed in accordance with this Chapter.

(e) If the Education *Suruhanu* declines to investigate a complaint as described in subsection (b) of this Section, the Education *Suruhanu* must then report the reasons for not investigating to *I Maga'lahren Guåhan*, *I Liheslaturan Guåhan*, the Superintendent of Education and the Board within forty-eight (48) hours.

(f) The Education *Suruhanu* shall report criminal investigative matters to the Guam Police Department and the Attorney General.

§ 11108. Reports.

The Education *Suruhanu* shall report monthly on his activities to *I Maga'lahren Guåhan*, *I Liheslaturan Guåhan*, the Superintendent of Education and the Guam Education Policy Board. The monthly report shall be posted on *I Maga'lahren Guåhan's* website, *I Liheslaturan Guåhan's* website and the Department of Education's website. The report should include all complaints filed under this Chapter, the issue of each complaint, the status of each complaint, and the conclusion or recommendations by the Education *Suruhanu*.

§ 11109. Confidentiality.

The Education *Suruhanu* shall treat all matters, including the identities of students, complainants, and individuals from whom information is acquired, as confidential, except as necessary to enable the Education

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Suruhanu to perform the duties of the office. Upon receipt of information that by law is confidential or privileged, the Education *Suruhanu* shall maintain the confidentiality of such information and shall not further disclose or disseminate the information except as provided by applicable local or federal law.

§ 11110. Liability for Good Faith Performance - Privileged Communications.

(a) The Education *Suruhanu* shall not be liable for good faith performance of responsibilities under this Chapter.

(b) No discriminatory, disciplinary, or retaliatory action may be taken against any student or employee of DOE, the office of the Superintendent of Education, or the Guam Education Policy Board, for any communication made, or information given or disclosed, to aid the Education *Suruhanu* in carrying out his duties and responsibilities, unless the same was done without good faith or maliciously. This subsection is not intended to infringe upon the rights of the Department of Education to discipline, or terminate an employee for other reasons or to discipline a student for other reasons.

(c) All communications by the Education *Suruhanu* or the Education *Suruhanu's* staff or designee, if reasonably related to the Education *Suruhanu's* duties and responsibilities and done in good faith, are privileged and that privilege shall serve as a defense to any action in libel or slander.

§ 11111. Relation to Other Laws.

This Chapter does not restrict or modify any other statute that creates other rights and procedures. The Education *Suruhanu* may act notwithstanding any provision in law that an administrative action shall be final or unappealable.

§ 11112. Budget Requirements.

The Education *Suruhanu* is authorized to hire personnel and to procure resources, including, but *not* limited to, executing contracts for office space rental; travel, purchase of supplies, materials and all other office related items or functions needed to fulfill his duties. A budget request prepared by the Education *Suruhanu* shall be included in the annual budget submission.

SOURCE: Amended by P.L. 30-055:II:II:2 (Sept. 4, 2009).

§ 11113. Severability.

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If any part of this Chapter shall be declared invalid, all other parts shall remain in full force and effect; the provisions of this Chapter are declared to be severable.
