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Scope of this Supplement

In December of 2005, the Guam Code Annotated 2005 Edition was released, which updated the code through parts of Public Law 28-68 then in effect. This supplement updates Volume 7 of the 2005 Edition through Public Law 28-100 which was signed into law on February 7, 2006. Included in this supplement are corrections made to Volume 7. The following table identifies the updated and corrected sections. Corrected sections are included at the end of this supplement.

Table of Sections Updated

Title	Section	Action	Public Law
17	2107	Amended	28-68 : IV:42
17	3117	Amended	28-68 : II:I:25
17	3121	Amended	28-68 : II:I:23
17	3125	Amended	28-68 : II:I:24
17	3207	R/R	28-87 : 2
17	5121	Amended	28-85 : 2
17	6113	Amended	28-99 : 1
17	7115	Added	28-68 : II:I:11
17	7116	Added	28-68 : II:I:12
17	7117	Added	28-68 : II:I:13
17	7118	Added	28-68 : II:I:17
17	15A301 (a)	Amended	28-110 : 1
17	16112	Amended	28-68 : IV:42
17	18104	Errata	
17	19103	Amended	28-97 : 1
17	26101- 26112	Renumbered	28-82 : 1
17	40104	Amended	28-68 : IV:45
17	41202	Amended	28-68 : IV:45
17	41302	Amended	28-68 : IV:42
17	49001	Added	28-68 : II:I:18
19	5B104	Amended	28-68 : IV:42
19	8318	Amended	28-93 : 2
19	8319	Amended	28-93 : 1
19	8404	Errata	
19	22108	Amended	28-68 : IV:45

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17 GCA § 2107. Compliance.

(a) An educational institution shall provide assurance to the Director of Administration that each program or activity operated by such educational institution will be operated in compliance with this Chapter, provided that a single assurance may be provided for all programs under the jurisdiction of any institution.

(b) An educational institution shall permit access by the Director of Administration during regular business hours to search of its books, records, accounts and other source of information and its facilities, and shall permit the Director of Administration to make copies of any such written information as may be pertinent to ascertain compliance with this Chapter.

(c) An educational institutions shall, within one year of the effective date of this Chapter:

(i) Evaluate, in terms of the requirements of this Chapter and regulations issued pursuant thereto, its current policies and practices and the effects thereof concerning admission of students, treatment of students and employment of both academic and non-academic personnel;

(ii) Modify any of these policies and practices which do not or may not meet the requirements of this Chapter; and

(iii) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

SOURCE: § 11056 GC, as added by P.L. 14-46. Amended by P.L. 28-068:IV:42 and 47 (Sept. 30, 2005), effective January 1, 2006; reference to Civil Service Commission changed to Director of Administration.

17 GCA § 3117. Same: Vacancies.

Any vacancies of elected member positions occurring on the Board shall be filled within ninety (90) days by appointment of *I Maga'lahen Guåhan* (the Governor of Guam) for the remaining term of the vacating member, subject to the advice and consent of *I Liheslaturan Guåhan* (the Guam Legislature). Such vacancies shall be filled by appointment of a member from the same district represented by the vacating member.

SOURCE: Amended by P.L. 28-068:II:1:25 (Sept. 30, 2005).

17 GCA § 3121. Budget.

The Superintendent of Education shall prepare the GPSS fiscal year budget. When formulating the fiscal year budget for the GPSS, the

Superintendent shall recommend spending priorities for Board approval with top priority given to those budgetary items that directly impact teaching and learning. The budget shall include a Board resolution indicating its approval of the budget submission and its funding priorities. The budget request for the non-personnel categories of each decentralized school shall be submitted as a separate line-item, by school, of the GPSS. The Superintendent shall submit the GPSS fiscal year budget, approved by the Board, to *I Liheslaturan Guåhan* no later than March 30, 2006 for Fiscal Year 2007. Every year thereafter the submission shall be on the thirtieth (30th) day of January.

SOURCE: Amended by 28-010:4. Amended by P.L. 28-068:II:1:23 (Sept. 30, 2005).

17 GCA § 3125. Chief Financial Officer.

(a) The position of Chief Financial Officer is hereby established within the Guam Public School System. The Chief Financial Officer shall meet the following minimum qualifications:

(i) shall have graduated from a college or university with a Master's degree in accounting, finance, economics, business administration or a related field or a Bachelor's degree in accounting, finance, economics, business administration or a related field plus possession of nationally recognized professional designation in accounting or finance; or

(ii) shall have at least seven (7) years experience as a Chief Financial Officer or Controller responsible for general accounting and fiscal services;

(iii) shall have knowledge and experience in negotiating and directing activities related to obtaining financial reimbursement from federal government programs; and

(iv) shall have experience in negotiating contracts with external parties, including third party payers, vendors, insurance carriers and other contracting parties.

(b) The Chief Financial Officer shall report directly to the Superintendent of Education. The Superintendent of Education shall hire the Chief Financial Officer by direct employment as an unclassified employee of the government of Guam, or by personal services contract, as is deemed necessary by the Superintendent of Education to attract and retain a qualified Chief Financial Officer. Notwithstanding the provisions of §6206.1 of Title 4 of the Guam Code Annotated, the salary of the Chief Financial Officer shall be established by the Guam Education Policy Board ('The Board'). The Board shall consider income levels of private and government practitioners on Guam and worldwide. Implementation of the salary structure is *subject to* the approval of the Board.

(c) The Chief Financial Officer shall provide the Guam Education Policy Board, *I Maga'lahaen Guåhan* and *I Liheslaturan Guåhan* with monthly financial reports on the receipt, allocation and expenditure of all funds provided to the GPSS, to include General Funds, Federal funds, and non-appropriated funds. Said financial reports shall be transmitted to said offices *no later than* thirty (30) days after the close of each month, and an annual financial report shall be submitted *no later than* sixty (60) days after the close of each fiscal year. Said financial reports shall be provided at no cost to the respective offices. Failure to provide timely reports shall constitute 'cause' for termination purpose.

SOURCE: Added by P.L. 27-117:2. Amended by P.L. 28-068:II:I:24 (Sept. 30, 2005).

17 GCA § 3207. Local Wellness Policy.

(a) In accordance with the Child Nutrition and W.I.C. Reauthorization Act of 2004 and guidelines of the Food and Nutrition Service of the United States Department of Agriculture, GPSS shall establish and implement 'The Local Wellness Policy' (Policy) as adopted and approved by the Board.

The Board shall adopt a uniform Body Mass Index (BMI) standard in evaluating measurable objectives of the Policy. The Policy shall conform to the standards of the U. S. Department of Health and Human Services' Centers for Disease Control and Prevention and the National Center for Health Statistics.

For purposes of this Section, the BMI is a calculation that uses a child's height, age, and weight to estimate how much body fat he or she has compared to population-referenced standards.

The objectives of the Policy may include, but are not limited to, the adoption of rules, regulations and training for:

- (1) Nutrition, to include optimal nutrition through the School Breakfast, Lunch, and After-School-Snack Programs for student growth, development, and academic achievement;
- (2) Nutrition Education in the school curriculum;
- (3) Physical Fitness, which includes intramural sports, playground equipment, interscholastic sports, and other competitive athletic activities;
- (4) Physical Fitness Education, which includes curriculum and physical education classes;

(b) GPSS schools shall provide annual reports of each student's BMI, which shall be computed and distributed to the student's parents or legal

guardians in a manner respecting the dignity and privacy of the student. The BMI report must include:

(1) a statement disclosing that the BMI is used as a screening tool and not an evaluative tool that diagnoses a student as overweight or underweight;

(2) a comprehensive analysis of consequent health problems associated with a student's BMI rating that is not within the suggested BMI range;

(3) provide references for available nutrition and physical activity health programs; and

(4) if applicable, suggest that the parent or legal guardian seek further evaluation from the student's primary physician.

(c) Evaluation of the Policy: GPSS and health officials shall utilize data collected from the BMI to apply for grants; to implement accessory nutritional, health or fitness programs; to assess the general health of students; and to evaluate the implementation, objectives and performance of the Policy. GPSS shall continually review the Policy and effect improvements in accordance with current nutrition, nutrition education, physical fitness, physical fitness education trends and practices. GPSS shall also establish standards for the preparation of evaluative reports with such statistical data and other information as the Board may require.

SOURCE: Repealed and reenacted by P.L. 28-087:2 (Dec. 12, 2005).

17 GCA § 5121. Bonuses, Rewards and Incentives Program.

Notwithstanding any other provision of law, the Guam Public School System is hereby authorized to create a *'Bonuses, Rewards and Incentives Program'* for the recruitment and retention of teachers, school administrators, licensed healthcare professionals, and critical positions under Special Education employed at the Guam Public School System. The *Bonuses, Rewards and Incentives Program* shall be consistent with the Guam Public School System's District Action Plan as authorized by 17 GCA §3217 and shall be subject to the availability of funds. The criteria, rules and regulations for the *Bonuses, Rewards and Incentives Program* shall be established by the Guam Education Policy Board."

SOURCE: Added by P.L. 26-167:2. Amended by P.L. 28-085:2 (Dec. 9, 2005).

17 GCA § 6113. Guaranteed Entrance to Classrooms.

No student who is regularly and legally enrolled in a school within the

Guam Public School System shall be refused to be placed in a classroom for which the student is eligible, as determined by the school administrator following guidelines established by the Board's policies.

No person wishing to attend school, who has reached that person's sixteenth (16th) birthday and has not reached that person's twentieth (20th) birthday, may be denied admission to a public school on the basis of age.

SOURCE: Repealed/reenacted by P.L. 26-130:6. Amended by P.L. 28-99 (Feb. 7, 2006).

17 GCA § 7115. Every Child is Entitled to an Adequate Public Education Fund.

There is hereby created, separate and apart from other funds of the government of Guam, a fund known as the '*Every Child is Entitled to an Adequate Public Education Fund* ('Fund').' The Fund shall *not* be commingled with any other fund, and shall be kept in a separate bank account and administered by the Superintendent of Education in accordance with policies adopted by the Education Policy Board which shall require that all checks issued from the Fund bear the signatures of at least two (2) employees. All monies deposited into the Fund shall be expended by the Superintendent, in accordance with the small purchase procedures set out at 5 GCA § 5213, and regulations enacted thereunder, in amounts up to Five Thousand Dollars (\$5,000) for providing an Adequate Public Education as that term is defined at 1 GCA § 715.12 (f), (g), (h), (i) and (l). The Superintendent may appoint an advisory committee to advise him on expenditures from the Fund.

SOURCE: Added by P.L. 28-068:II:I:11 (Sept. 30, 2005).

17 GCA § 7116. Donations to the Fund.

The Treasurer of Guam is authorized to accept monetary donations from any individual or organization which the Treasurer shall deposit in the Every Child is Entitled to an Adequate Public Education Fund and promptly report to the Superintendent of Education. The provisions of 5 GCA, Article 11, Ethics in Public Contracting are applicable to donors to the Fund.

SOURCE: Added by P.L. 28-068:II:I:12 (Sept. 30, 2005).

17 GCA § 7117. Restrictions on Expenditures from the Fund.

No expenditure may be made from the Every Child is Entitled to an Adequate Public Education Fund until the essential details of the expenditure are published on the website maintained by the Guam Public School System pursuant to 5 GCA § 10305. The Superintendent of Education and the Treasurer of Guam shall make quarterly reports showing the names of donors and the amounts of the donations to *I Maga'lahi* and the Speaker of *I*

Liheslaturan Guåhan and publish the reports on the Guam Public School System website.

SOURCE: Added by P.L. 28-068:II:I:13 (Sept. 30, 2005).

17 GCA §7118. Donations in Kind.

The Superintendent is authorized to accept in kind contributions from any individual or organization. In kind contribution is defined as a contribution of services, materials or equipment for the benefit of the GPSS. Upon acceptance of said in kind contribution, the Superintendent shall provide the individual or organization with a written statement acknowledging said contribution and assessing its fair market value.

(a) The Superintendent of Education or his designee shall physically receive such donations on behalf of GPSS.

(b) The Superintendent shall publish a quarterly report of all such donations on the GPSS website, which shall include the names of the donors and the items donated.

(c) The provisions of Title 5 GCA Sections 5601 through 5677 and any other Guam laws which create ethical standards of conduct shall apply to all officers and employees of the government of Guam who receive or possess such donations, the donors, and the donations made pursuant to this Section.

(d) The Guam Education Policy Board shall enact rules and regulations regarding the making and acceptance of donations by the GPSS.

SOURCE: Added by P.L. 28-068:II:I:17 (Sept. 30, 2005).

§ 15A301. Students Entitled to Merit Awards.

(a) There are established annual Merit Awards for high school students in the graduating classes of a public and private high school licensed to do business on Guam now or hereafter established. The students entitled to these awards shall be the students having the highest scholastic standing in the graduating classes of each such public and non-public high school on Guam. The awards shall be determined as follows:

(1) One for every fifty (50) graduates or fraction thereof of a school's graduating class. If as a result of the equal scholastic standing of two (2) or more graduates, there is a tie for the awards granted pursuant to this Chapter, the University of Guam shall provide a mechanism to break the tie. Awardees are entitled to four (4) years of education at the University of Guam. However, if the awardee is the top-ranked student academically

of that person's graduating class, and such awardee's major is unavailable at the University of Guam, the awardee may attend any accredited college or university in the United States, or one recognized by the Council for Higher Education Accreditation (CHEA), or its successors, where such declared major is available. The benefits are according to the amounts provided in §15A302 of this Article, plus the cost of airfare for one-way, economy airline ticket to the school of attendance and one-way ticket to return to Guam upon completion of studies.

(2) Of the students receiving awards in Subsection (1), supra, who attend and graduate from the University of Guam, the top two (2) awardees per graduating class shall be entitled to an additional two (2) years of study for a Master's Degree at the University of Guam after completion of the bachelor's program awarded under the provisions of Subsection (1). In the event that, as a result of graduating class size, only one student is entitled to an award under Subsection (1), supra, then only one student shall be eligible for an award under this Subsection. The benefits are according to the amounts provided in § 15A302 of this Article.

All awards shall be subject to the following limitations:

A recipient must be a:

(i) United States citizen, or a permanent resident alien, who has completed four (4) academic years in a high school on Guam; and

(ii) a resident of Guam for a continuous period of not less than five (5) years immediately preceding June 15th of the year the award is to be awarded.

(b) If any student is ineligible for an award because of failure to meet the requirements contained in Subsection (a) of this Section; or if any eligible student chooses not to accept an award when first offered such award, the award shall be granted to the eligible student with the next highest scholastic rank, or in the case of tie, the student that was eliminated by the tie-breaker. If an eligible student declines to accept an award when first offered, such student cannot accept such an award after it has been granted to another student. The recipient of a merit award must notify the Board within thirty (30) days, that the award is accepted. If such recipient fails to do so, the award is thereby forfeited and the same shall be offered to the next alternate.

(c) Award recipients must agree that the recipient will work on Guam for a period of one (1) year for each academic year the award was received within six (6) months following the completion or termination of the course of studies for which the award was granted; provided, that if the recipient continues as a full-

time student at a graduate or professional school, such recipient may defer work on Guam until such additional studies are completed.

Awards granted on or subsequent to the effective date of this Section shall be cancelled if a recipient:

(1) fails to maintain a cumulative grade point average of 2.5 or its equivalent, except a recipient may be allowed one (1) academic term to regain this average without cancellation of the award, or

(2) fails to meet the academic and/or other requirements governing full-time students at the University of Guam, except a recipient shall be allowed one (1) academic term in which to regain full-time student status before cancellation of such recipient's award.

SOURCE: Amended by P.L. 25-145:3. Subsection (a)(1) amended by P.L. 26-42:3. Subsection (a) amended by P.L. 28-110:1 (April 14, 2006).

17 GCA § 16112. Personnel Rules: Academic Personnel.

Rules and regulations governing selection, compensation, promotion, performance evaluation, disciplinary action and other terms and conditions of employment affecting academic personnel shall be adopted by the Board of Regents. Such rules and regulations shall provide for the employment and retention of persons on the basis of merit, and shall include an orderly and systematic method of recruitment and the establishment of a list of qualified applicants for employment purposes. *Academic personnel* are defined as faculty and administrators. For the purposes of this Section, an *administrator* is defined as one who holds any of the following positions: President or Vice-President, Assistant or Associate to the President or Vice-President, Dean, Associate or Assistant Dean or Director, Associate or Assistant Director, provided, however, that nothing in this Chapter shall be construed as preventing the Board of Regents from establishing other administrator positions or abolishing any of the existing positions indicated herein and further provided, however, that nothing in this section nor in any other section of this Chapter involving the outlay of public funds shall become effective unless funds therefor shall have been provided in the University's annual budget. The term *administrator* does not include positions within the purview of the Director of Administration under Chapter 6 of Title 4, Guam Code Annotated, or other applicable laws.

Faculty shall have the right to form, join, assist and participate in the management of employee organizations of their choice and to act as organization representative or to refrain from any such activity, without interference, restraint, coercion or discrimination and without fear of penalty or reprisal; provided that, employees shall not participate in the management of an

organization or act as an organization representative, where such activity would result in a conflict of interest or otherwise be incompatible with law or with the employee's official duties.

Within ninety (90) days of the effective date of this Act, the Board of Regents, in cooperative consultation with the recognized bargaining agent, shall develop and adopt reasonable rules for the settlement of collective bargaining disputes, including access to impartial mediation and arbitration.

SOURCE: Added by GC § 11841 (P.L. 13-194:1); amended by P.L. 14-71:4; and P.L. 16-23:4. Included as part of this Chapter [Charter] by P.L. 19-40:1. Section amended by P.L. 23-26:10 (5/95). Amended by P.L. 28-068:IV:42 and 47 (Sept. 30, 2005), effective January 1, 2006; reference to Civil Service Commission changed to Director of Administration.

NOTE: See Cross-Reference to § 16109. The issue of Civil Service control of academic personnel was first settled by P.L. 22-137 in favor of UOG faculty not being within the classified service. The amendment by P.L. 23-26:10 further clarified the issue.

17 GCA § 19103. Selection of Trainees.

The program shall be open to any student who has completed high school, or is otherwise declared by the University of Guam as eligible for admission to the program; who is a United States citizen or permanent resident alien; *and* who has been a resident of Guam for *at least* one (1) year *prior to* the beginning of the academic semester or term the student is admitted, registered and enrolled in the program. The number of trainees who may enroll in the program annually shall be limited *only* by the capacity of the University of Guam and by funds made available to it by annual appropriation. In the event of limited space and/or funds, priority shall be given to students at the highest level of training and closest to the completion of their program. No student may receive stipends beyond the number of calendar years normally required to complete a training program. Notwithstanding any other provision of law or administrative rules and regulations, students who hold a Bachelor's Degree in a subject other than nursing shall be eligible for the program, provided that such students meet all other requirements herein.

SOURCE: § 11887 GC, as added by P.L. 11-161. Amended by P.L. 26-09:1; P.L. 28-97 (Feb. 7, 2006).

17 GCA § 40104. Apprentice Program Administrator.

There is hereby established within the Department of Administration an Apprentice Program Administrator who shall be responsible in administering the apprenticeship program. He shall advise and assist line management in the development, organization and administration of the apprenticeship program. He shall work closely with heads of shops in the preparation of training materials, planning of training schedules, assuring adequate instruction in the shops and in coordinating the work experience and related training phases of

the program. He shall have direct supervision of classroom instruction and shall be responsible for the maintenance of apprentice training standards, for maintenance and review of apprentice records, administration of apprentice advancements and graduation and submission of reports. In addition, the Apprentice Program Administrator shall be responsible for promoting the general welfare of apprentices. This Section shall be effective upon the establishment of the pay range by the Civil Service Commission.

SOURCE: §11999.4 GC, as added by P.L. 13-164; amended by P.L. 14-92.

COMMENT: Effective January 1, 2006, the authority of the Civil Service Commission herein transferred to the Director of Administration pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

17 GCA § 41202. Definitions.

For the purpose of this Article:

(a) *Council* means the Rehabilitation Advisory Council (RAC) for Division of Vocational Rehabilitation (DVR).

(b) *Division* means the Division of Vocational Rehabilitation (DVR).

(c) *Administrator* means the Administrator of the Division of Vocational Rehabilitation (DVR), who shall be an ex-officio non-voting member of the RAC. The Administrator must have at least a bachelors degree in Special Education, Vocational Rehabilitative Counseling Services or related subject, and at least four (4) years of experience in vocational rehabilitation service or related service dealing with persons with disabilities of which two (2) years shall be administrative. The position shall be of the classified service of the government of Guam. The position Classification Standard and Compensation shall be established by the Director of Administration.

(d) *Individual with a Disability* means any individual who:

(1) Has a physical or mental impairment which for this individual constitutes or results in a substantial impediment to employment, and can benefit in terms of an employment outcome through the provision of vocational rehabilitation services provided, pursuant to Title I, III, VI, or VIII of the Vocational Rehabilitation Act of 1973, as amended.

(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to this Chapter.

(e) *Individual with a Severe Disability* means an individual with a disability who has a severe physical or mental impairment, which seriously limits one or more functional capacities as defined by the Vocational Rehabilitation Act, as amended.

(f) *Vocational Rehabilitation Services* means those services identified in this Article, to include services identified in the approved state plan. All expenses for the purposes of these services will not be restricted or included under capital outlay.

(g) *Supported Employment* means competitive work in integrated work settings for individuals with the severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disability, need intensive supported employment services for the period, and any extended services to include transitional employment for persons who are individuals with the most severe disabilities due to mental illness.

(h) *Nonprofit* when used with respect to a rehabilitation facility means a rehabilitation facility which is owned and operated by a corporation or association, no part of the net earnings of which accrues or may lawfully accrue, to the benefit of any private shareholder or individual, and the income of which is exempt from taxation under §501(c)(3) of the Internal Revenue Code of 1954.

(i) *Assessment for determining eligibility and vocational rehabilitation needs* means, to determine whether an individual is eligible for vocational rehabilitation services; and to the extent additional data is necessary to make such determination, a preliminary assessment of such data, including the provision of goods and services during such assessment; to the extent additional data is necessary, a comprehensive assessment, including the administration of the assessment, of the unique strengths, resources, priorities, interests and needs, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature and scope of vocational rehabilitation services to be included in the individualized written rehabilitation program of the individual, which comprehensive assessment is limited to information that is necessary to identify the rehabilitation needs of the individual to develop the rehabilitation program of the individual; uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements - existing information; and such information as can be provided by the individual and , where appropriate, by the family of the individual; may include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments and employment opportunities of the individual, and the medical, psychiatric, psychological and other pertinent vocational, educational,

cultural, social, recreational and environmental factors, that affect the employment and rehabilitation needs of the individual and may include an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and referral; the provision of vocational rehabilitation services to an individual for a total period not in excess of eighteen (18) months for the limited purpose of making determinations regarding whether an individual is eligible for vocational rehabilitation services and regarding the nature and scope of vocational rehabilitation services needed for such individual; and an assessment at least once every ninety (90) day period during which such services are provided, of the results of the provision of such services to an individual to ascertain whether any of the determinations described may be made.

(j) *State* means any one of the several states, territories or possessions of the United States.

(k) *Community Rehabilitation Program* means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individuals to maximize opportunities for employment, including career advancement:

- (1) Comprehensive rehabilitation services which shall include, under one management, medical, psychological, social, and vocational services.
- (2) Testing, fitting or training in the use of prosthetic and orthotic devices.
- (3) Recreation therapy.
- (4) Physical and occupational therapy.
- (5) Speech, language and hearing therapy.
- (6) Psychiatric, psychological and social services.
- (7) Personal and work adjustment.
- (8) Vocational training, in combination with other rehabilitation services.
- (9) Evaluation or control of special disabilities.

(10) Assessment for determining eligibility and vocational needs, including evaluation for supported employment, development, and placement in jobs.

(11) Development of, and placement in jobs.

(12) Job coaching services to enable a person with disabilities to obtain or maintain supported or competitive employment.

(13) Extended employment for persons with severe disabilities who cannot be readily absorbed into the competitive labor market.

(14) Personal assistance services.

(l) *Vocational Rehabilitation Services* when provided to an individual means any one or any combination of the following services:

(1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, assessment by personnel skilled in rehabilitation technology;

(2) counseling, guidance, and work-related placement services for individuals with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services and follow-up, follow-along, and specific post employment services necessary to assist such individuals to maintain, regain or advance in employment;

(3) vocational and other training services for individuals with disabilities, which shall include personal and vocational adjustment, books or other training materials, and such services to the families of such individuals as are necessary to the adjustment or rehabilitation of such individuals, except that no training services in institutions of higher education shall be paid for with basic support Federal funds unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training;

(4) physical and mental restoration services, including, but not limited to,

(a) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes an impediment to employment, but is of such nature that such correction or modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time,

(b) prosthetic and orthotic devices,

(c) eyeglasses and visual services, as prescribed by qualified personnel under Guam licensure laws,

(d) special services, including transplantation and dialysis, artificial kidneys and supplies necessary for the treatment of individuals with end-stage renal disease, and

(e) diagnosis and treatment for mental and emotional disorders by qualified personnel under Guam licensure laws;

(5) maintenance for costs incurred while participating in rehabilitation;

(6) interpreter services for individuals who are deaf, and reader services for those individuals determined to be blind after an examination by qualified personnel under Guam licensure laws;

(7) recruitment and training services for individuals with disabilities to provide them with new employment opportunities in the fields of rehabilitation, health, welfare, public safety and law enforcement, and other appropriate service employment;

(8) rehabilitation teaching services and orientation and mobility services for individuals who are blind;

(9) occupational licenses, tools, equipment and initial stocks and supplies;

(10) transportation in connection with the rendering of any vocational rehabilitation service;

(11) telecommunication, sensory and other technological aids and devices;

(12) rehabilitation technology services;

(13) referral and other services designed to assist individuals with disabilities in securing needed services from other agencies through agreements developed, if such services are not available under the Rehabilitation Act of 1973, as amended;

(14) transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives;

(15) on-the-job training or other related personal assistance services provided while an individual with a disability is receiving vocational rehabilitation services;

(16) supported employment services; and

(17) vocational rehabilitation services, when provided for the benefit of groups of individuals, may also include the following:

(i) in the case of any type of small business operated by individuals with the most severe disabilities, the operation of which can be improved by management services and supervision provided by the Department, the provision of such services and supervision, along or together with the acquisition of equipment and initial stocks and supplies;

(ii) the establishment, development, or improvement of community rehabilitation programs, including under special circumstances, the construction of a facility, and the provision of other services, including services offered at community rehabilitation programs, which promise to contribute substantially to the rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation written program of any one individual with a disability. Such programs shall be used to provide services that promote integration and competitive employment;

(iii) use of existing telecommunications systems, including telephone, television, satellite, radio, and other similar systems, which have the potential for substantially improving service delivery methods, and the development of appropriate programming to meet the particular needs of individuals with disabilities;

(iv) the use of services providing recorded material for individuals who are blind and captioned films or video cassettes for individuals who are deaf; and

(v) technical assistance and support services to businesses that are subject to Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. §12111 *et seq.*) and that are seeking to employ individuals with disabilities.

(m) *Designated State Unit or State Vocational Rehabilitation Agency* means the designated state unit, which is the Division of Vocational Rehabilitation (DVR), designated to develop and administer the State Plan for Vocational Rehabilitation Services.

(n) *State Plan* means the annual State Plan for Vocational Rehabilitation Services, or the vocational rehabilitation services part of a consolidated rehabilitation plan for vocational rehabilitation. In order to be eligible to participate in programs under the Rehabilitation Act of 1973, as amended, the

Division shall submit to the Commissioner of Region IX, USDOE/Rehabilitation Services Administration a plan for vocational rehabilitation services for a three (3) year period, or shall submit the plan on such date, and at such regular intervals, as may be determined to be appropriate to coincide with the intervals at which the Division submits state plans under other Federal laws, such as part B of the Individuals with Disabilities Education Act (20 U.S.C. §1411 *et seq.*).

(o) *Individualized written rehabilitation program* shall do all of the following:

(1) Be designed to achieve the employment objective of the individual, consistent with the unique strengths resources, priorities, concerns, abilities and capabilities of the individual, and to the maximum extent appropriate, to include placement in integrated settings.

(2) Be jointly developed and agreed upon by the eligible individual, or when appropriate, the individual's parent, family member, guardian, advocate or authorized representative, and DVR. In developing the program, DVR shall inform the individual about and involve the individual in choosing among alternative goals, objectives, available services, entities providing the services and the methods used to provide or procure the services.

(3) Contain all of the information required by Federal law and regulations, including a statement of the specific vocational goods and services to be provided, and the terms and conditions under which available goods and services will be provided, to the extent Federal funds are available, to the individual in the most integrated setting.

(4) An individual is eligible for assistance consistent with the approved state plan.

(p) *Assistive Technology Service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device; including:

(i) the evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment or work place;

(ii) purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(iii) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(vi) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(q) *Comparable Services and Benefits* means services and benefits that are:

(i) provided or paid for, in whole or in part, by other Federal or Local public agencies, by health insurance, or by employee benefits;

(ii) available to the individual within a reasonable period of time; and

(iii) commensurate to the services that the individual would otherwise receive from the Division.

(r) *Competitive Employment* means work:

(i) in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) for which an individual is compensated at or above the minimum wage, but not less than the prevailing wage for the same or similar work in the local community performed by individuals who are not disabled.

(s) *Employment Outcome* means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated work setting to the greatest extent practicable; supported employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

(t) *Extended Employment* means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act, and any needed support services to a person with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed chooses to remain in extended employment.

(u) *Integrated Setting* with respect to the provision of services or an employment outcome, means a setting typically found in the community in which applicants or eligible individuals have the opportunity to interact on a regular basis with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(v) *Maintenance* means monetary support provided to an eligible individual or an individual receiving extended evaluation services for those living expenses, such as food, shelter and clothing, that are excess of the normal living expenses of the individual and that are necessitated by the individual's participation in a program of vocational rehabilitation services.

(w) *Personal Assistance Services* means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising and directing personal assistance services.

(x) *Physical and Mental Restoration Services* means corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment.

(y) *Transitional Employment* as used in the definition supported employment, means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

COMMENT: Effective January 1, 2006, reference to the "Civil Service Commission," amended to "Director of Administration" pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

17 GCA § 41302. Definitions.

(a) *Active Services* means provision of services as specified in an individualized service plan. These services may include, but not limited to, activities, experiences and therapy which are part of a professionally developed and supervised program of health, social, habilitative and developmental services.

(b) *Case Management* means services to persons with disabilities that assist in gaining access to need social, medical , legal, educational and other services, and includes:

(1) Follow along services which assure, through a continuing relationship between an agency or provider and a person with a disability and the individual's parent, if the individual is a minor, or guardian, if a guardian has been appointed for the purpose, that the changing needs of the individual and the family are recognized and appropriately met.

(2) Coordinating and monitoring services provided to persons with disabilities by two (2) or more persons, organizations or agencies that are qualified or eligible under other case management programs.

(3) Providing information to persons with disabilities about availability of services and assisting the persons in obtaining the services.

(c) *Division* means the Division of Support Services for Individuals with Disabilities (DSSID).

(d) *Individual with a Disability* means any individual who:

(1) Has a physical or mental impairment (a) that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment.

(e) *Administrator* means the Administrator of Division of Support Services for Individuals with Disabilities (DSSID) who shall be an ex-officio, non-voting member of the Division of Support Services for Individuals with Disabilities Council (DSSID). The Administrator must have at least a bachelors degree in Special Education or Social Work or related subjects and at least four (4) years of experience in community services dealing with persons with disabilities, of which two (2) years shall be administrative. The position shall be of the classified service of the government of Guam. The position Classification Standard and Compensation shall be established by the Director of Administration.

(f) *Habilitation* means the process by which the staff of an agency assists an individual to cope more effectively with the demands of his or her own person and environment and to raise the level of his or her physical, mental and social functioning. Habilitation includes, but is not limited to, programs of formal structured education and treatment.

(g) *Individualized service plan* means the written plan for required in Section 41305.

(h) *Individually appropriate* means responsive to the needs of the individual, as determined through interdisciplinary assessment and provided pursuant to an individualized service plan.

(i) *Interdisciplinary team* means a group of persons that is drawn from or represents those professions, disciplines or service areas that are relevant to identifying an individual's needs and designing a program to meet them, and is responsible for evaluating the individual's needs, developing an individual program plan to meet them, periodically reviewing the individual's response to the plan, and revising the plan accordingly. A complete team includes the individual receiving the service, unless clearly unable to participate; the individual's family, unless their participation has been determined to be inappropriate; those persons who work most directly with the individual each of the professions, disciplines or service areas that provide service to the individual, including direct-care or direct-contact staff; and any other persons whose participation is relevant to identifying the needs of the individual and devising ways to meet them.

(j) *Least restrictive* means the least intrusive and least disruptive intervention into the life of an individual with a disability that represents the least departure from normal patterns of living that can be effective in meeting the person's developmental needs.

(k) *Inclusive environment* means that environment that represents the least departure from normal patterns of living that can be effective in meeting the individual's needs.

(l) *Monitor* means to conduct a systematic, coordinated, objective, qualitative review of services provided by any person, agency or organization.

(m) *Representative* means any individual who can advise and advocate for an individual with disabilities, who shall serve at the request and pleasure of such person; provided, that if the person with disabilities is a minor or is legally incapacitated.

(n) *Residence or residential* means the living space occupied by the individual with a disability, including single-person homes, natural family homes, care homes, group homes, foster homes, institutional facilities and all other types of living arrangements.

(o) *Services* means appropriate assistance provided to an individual with a disability, individually appropriate environment to provide for basic living arrangements and continuing development of independence or interdependent living skills of the person. These services include, but are not restricted to: case management, medical, education, assistive technology, advocacy, residential,

developmental and vocational support; training; active services; day treatment; day activity; respite care; domestic assistance; attendant care; rehabilitation; speech, physical occupational and recreational therapy; recreational opportunities; counseling, including counseling to the person's family, guardian or other appropriate representative; development of language and communications skills; interpretation; transportation and equipment, and other related services.

(p) *Respite Care* means in-home or out-of-home temporary, non-medical support for families with individuals with disabilities,

SOURCE: Added by P.L. 24-16:2. Amended by P.L. 28-068:IV:42 and 47 (Sept. 30, 2005), effective January 1, 2006; reference to Civil Service Commission changed to Director of Administration.

17 GCA § 49001. 2005 Revenue School Improvement Bonds.

(a) Authorization of Issuance of Revenue School Improvement Bonds. *I Maga'lahen Guåhan* is authorized to issue new bonds of the government of Guam in an aggregate principal amount not to exceed Seventeen Million Dollars (\$17,000,000) to fund all or a portion of the capital outlay and capital improvement projects described herein, and paying expenses incurred in connection with the issuance of such new bonds; provided, however, that the issuance of the new bonds shall not violate the debt limitation provisions of 48 U.S.C. §1423a.

(b) Terms and Conditions Determined by Indenture. The terms and conditions of the bonds shall be as determined by *I Maga'lahi* by the execution of an indenture securing the bonds upon or before the issuance of the bonds. The indenture shall contain such terms and conditions as are consistent with this Section.

(c) Valid and Binding Obligation. To the extent that the debt limitation provisions of 48 U.S.C. §1423a are not violated, any bonds authorized by this Section shall constitute the valid and legally binding limited obligations of the government of Guam payable solely from and secured by a pledge of the revenues pledged pursuant to Subsection (d) of this Section.

(d) Pledge of Revenues; Not a General Obligation. There is hereby established the School Improvement Fund, hereinafter known as the 'SIF'. Any and all revenues derived from the issuance of new and renewal licenses issued by the Business License Branch of the Department of Revenue and Taxation in Guam, and all fees and penalties collected by the Guam Public School System, except as restricted by federal law, shall be deposited in the SIF. All funds held in the SIF may be pledged to secure the repayment of any bonds issued under this Section and to pay costs incurred in the issuance or

administration of the bonds. Any pledge made to secure the bonds shall be valid and binding from the time the pledge is made. The revenues pledged and thereafter received by the government of Guam or by any trustee, depository or custodian shall be deposited in a separate account and shall be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the government of Guam or such trustee, depository or custodian, regardless of whether the parties have notice thereof. The indenture or agreement by which such pledge is created need not be recorded. All such fees and penalties, to the extent so pledged, are hereby continuously appropriated for such purpose. The bonds shall not be, and shall state on their face that they are not, general obligations of the government of Guam.

(e) Waiver of Immunity. Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5 of the Guam Code Annotated, the government of Guam waives immunity from any suit or action in contract on the bonds, but does not waive sovereign immunity as to the personal liability of elected officials and employees of the government of Guam.

(f) Form of Bonds; Covenants; Appointment of Fiduciaries. The technical form and language of the bonds, including provisions for execution, exchange, transfer, registration, paying agency, lost or mutilated bonds, negotiability, cancellation and other terms or conditions not inconsistent with this Section, including covenants relating to the maintenance of revenues, shall be as specified in the indenture approved by *I Maga'lahi* authorizing the issuance of the bonds. The indenture may appoint one or more trustees or other fiduciaries authorized to receive and hold in trust the proceeds of the bonds and revenues relating thereto, to protect the rights of bondholders and to perform such other duties as may be specified in the indenture. *I Maga'lahi* is also authorized to execute, on behalf of the government of Guam, any appropriate agreements, certificates or other instruments relating to the bonds, the sale of the bonds and payment of the bonds being refunded. The indenture shall be subject to the approval of *I Liheslaturan Guåhan*.

(g) Authorization for Credit Enhancement. *I Maga'lahi* is authorized to enter into such contracts or agreements with such banks, insurance companies or other financial institutions as he determines are necessary or desirable to improve the security and marketability of the bonds issued under this Section. Such contracts or agreements may contain an obligation to reimburse, with interest, any such banks, insurance companies or other financial institutions for advances used to pay principal or interest on the bonds. Any such reimbursement obligation shall be payable solely from, and may be secured by

a pledge of, the revenues described in Subsection (d) of this Section.

(h) Use of Proceeds from the Sale of the Bonds. Proceeds from the sale of the bonds shall be used solely to fund all or a portion of the projects enumerated in Subsection (j) of this Section, and to pay expenses relating to the authorization, sale and issuance of the bonds and the payment of the bonds being refunded, including, without limitation, printing costs, costs of reproducing documents, bond insurance premiums, underwriting, legal and accounting fees and charges, fees paid to banks or other financial institutions providing credit enhancement, costs of credit ratings, fees and charges for execution, transportation and safekeeping of bonds, escrow agent fees and other costs, charges and fees in connection with the issuance, sale and delivery of the bonds and the payment of the bonds being refunded.

(i) No Personal Liability Except for Failure to Perform Ministerial Duty. No employee or elected official of the government of Guam shall be individually or personally liable for the payment of any amounts due on any bonds issued under this Section, or for any other liability arising in connection with the bonds; provided, however, that nothing in this Section shall relieve any employee or elected official from the performance of any ministerial duty required by law.

(j) Proceeds. The proceeds shall be expended for the following school improvement projects:

(1) design, repair, renovation and reconstruction of facilities that are part of public schools in Guam, inclusive of restrooms, classrooms, cafeterias, labs and other such facilities as determined by the Superintendent of Education, provided that no such work may be performed on a facility that is not a school; and

(2) purchase and upgrading of school air conditioning systems, school fire alarm and safety systems and classroom computers, as determined by the Superintendent of Education.

(k) Alternative Financing. Should *I Maga'lahi* determine that an alternative method of financing, including, but not limited to, a short term debt, mortgage, loan, federally guaranteed loan or loan by an instrumentality of the United States Federal Government will better serve the needs of the school system and the people of Guam, *I Maga'lahi* is authorized to pursue such financing by pledging the revenues detailed in this Section, provided that the proceeds of such alternative financing shall be as authorized by this Section and provided further that any instrument of such financing shall be subject to the approval of *I Liheslaturan Guåhan* before execution.

(l) Assistance by GEDCA. The Guam Economic Development and Commerce Authority shall provide such assistance as *I Maga'lahi* requires or requests in fulfilling the purpose of this Section. Such assistance will be provided without fee or compensation of any kind.

17 GCA § 26101. Legislative Findings and Intent.

(a) As there continues to exist within the Territory of Guam a need for a policy which promotes soil and water conservation and which prevents erosion-related and water management-related problems to conserve and improve the use of the Territory's land and water resources, the Legislature finds the need to establish Soil and Water Conservation Districts while continuing the University of Guam's role as the Territory's lead soil conservation agency, and the existing programs of conservation under the Public Utility Agency of Guam and the Environmental Protection Agency.

SOURCE: GC §12392.

17 GCA § 26102. Definitions.

Whenever used in this Article:

(a) *District* or *Soil and Water Conservation District* means a governmental subdivision within the University of Guam of this Territory organized in accordance with this Chapter;

(b) *Director* means a member of the government body of a district.

(c) *Land occupier* or *occupier of land* includes any person, firm, or corporation who holds title to or, in the case of leased land, the person, firm, or corporation who holds possession of any lands lying within a district organized under this Article;

(d) *Farm land owner or occupier* means a person, firm, or corporation who is an owner or operation of land used for the purpose of commercially producing livestock, crops, fruit or nut-bearing trees, vines, bushes, or aquaculture products;

(e) *Cooperator* means a farm land owner or occupier who has entered into an agreement with a district requesting the district to provide aid under this Article.

SOURCE: GC §12392.1.

17 GCA § 26103. Conservation Districts Established.

A Northern Soil and Water Conservation District and a Southern Soil and Water Conservation District shall be created under the University of Guam and

shall work in conjunction with the Bureau of Planning, College of Agriculture and Life Sciences (UOG), Department of Land Management, Guam Environmental Protection Agency and the Public Utility Agency of Guam to conserve, develop and the use the soil and water resources of Guam in order to control and prevent soil erosion, flooding and to improve agriculture water management. Any project which is proposed by a District which involves the responsibilities of another government of Guam agency shall require that agency's review and approval before implementation. Project of one district may be jointly sponsored by both districts where feasible. The activities and operations shall be by the District Board and University of Guam to assure compatibility with related programs. These activities shall comply with provisions of the Government Code including comprehensive plans, water management plans, and other pertinent planning documents.

SOURCE: GC §12392.2.

17 GCA § 26104. General Powers & Duties of Department.

(a) The University of Guam shall keep a record of its official actions, and may perform such acts and promulgate such rules and regulations as may be necessary for the execution of its functions under this Article;

(b) The University of Guam may delegate to any member, agent, or employee such powers and duties as it may deem proper;

(c) Upon request of the University of Guam, other agencies of the territorial government shall, insofar as available appropriations and resources permit, assign staff members of personnel to the Department, and make such reports, surveys, and studies as the Department may request; and

(d) The University of Guam shall conduct the election of all District Directors and in conjunction therewith: (1) promulgate the necessary rules and regulations by which farm land owners and operators shall nominate and elect from among their number District Directors, and (2) the President of the University of Guam shall certify the election results and provide a copy to the Governor and the Legislature.

SOURCE: GC §12392.3.

17 GCA § 26105. Additional Powers & Duties of Department.

(a) The University of Guam shall:

(1) provide appropriate assistance to the directors of districts in carrying out their powers and programs;

(2) keep districts informed of the activities of the other district and facilitate cooperation between them;

(3) coordinate district programs insofar as that may be done by advice and consultation;

(4) obtain the assistance of the United States government and of local agencies in the work of the districts; and

(5) disseminate information throughout the Territory concerning district activities and programs; and

(b) The University of Guam shall, in coordination with the Bureau of Planning, Guam Environmental Protection Agency, Department of Land Management, Public Utility Agency of Guam and the Soil and Water Conservation Districts, prepare and implement territorial soil and resource conservation and utilization plans which will conserve and improve the Territory's resources; and it shall review and provide determinations on plans submitted to it by districts and other entities eligible to receive federal assistance. In the execution of this responsibility, the Department is authorized to apply for and accept grants, loans, contributions, appropriations, and assistance from the federal government and from any other sources, public and private, and enter into and carry out contracts or agreements in connection therewith, and include in any contract for financial assistance with the federal government such provisions as it may deem reasonable and appropriate and which are not inconsistent with the purposes of this Article and the laws of the Territory.

SOURCE: GC §12392.4

17 GCA § 26106. Organization of Districts.

To complete the organization of a district, the University of Guam, in accordance with the Administrative Adjudication Act, shall present to the Governor a statement setting out the name of the district and its boundaries and certifying that the procedures prescribed in this article for the organization of a district have been fully complied with. The statement shall request the Governor to issue a certificate of organization to the district. The Governor shall record the statement in his office and shall issue to the Directors of the district a certificate, under the seal of the Territory, of the due organization of the district.

SOURCE: GC §12392.5

17 GCA § 26107. Composition and Responsibilities of Districts, and Appointments, Tenure, and Compensation of Directors.

(a) The Soil and Water Conservation Districts shall each:

(1) Be composed of five (5) Directors, each of whom is largely engaged in commercial farming and is land occupier of the district;

(2) Have an advisor assigned to it by the University of Guam and by the College of Agriculture and Life Sciences, and shall request as required technical advisors from other agencies of the territorial government;

(3) Have a Chairperson and a Vice Chairperson, who shall be designated by the directors;

(4) Have a quorum in order to conduct business. Three directors shall constitute a quorum; and the concurrence of a majority upon any official matter shall be necessary; [and]

(5) Have monthly meetings; and semi-annually both districts shall have a joint meeting.

(b) The selection of Directors for each district and their tenure shall be as follows:

(1) Farm land owners or occupiers of the districts shall nominate and elect five (5) nonpartisan directors from among their number. The first election shall be held within two (2) months after enactment of this Act; and commencing in 1985, elections shall thereafter be held on the second Tuesday in August. At the first election, one (1) director shall be elected for one (1) year, two (2) directors shall be elected for two (2) years, and two (2) directors shall be elected for three (3) years. Thereafter, commencing 1985, each director shall be elected for a term of three (3) years.

(2) Vacancies shall be filled for an unexpired term. The selection of successors to fill an unexpired term of elected directors shall be made by the Governor with the consent of the Legislature.

(c) [Repealed]

(d) Each Soil and Water Conservation District shall prepare a long-range plan and an annual workplan with assistance from advisory members and agencies. Each District shall keep a record of proceedings, resolution, regulations, and orders issued or adopted and accounts of receipts and disbursement; and disbursements; and shall furnish to the University of Guam copies of such documents, instruments or information concerning their activities as the department request. District activities shall be limited to the following types of land within the district:

(1) all public land leased for agricultural activities, including leased federal land. Any and all projects which are proposed for leased federal land shall require the review and approval of the federal agency which has jurisdiction over the land;

(2) public and private land which is designated for agricultural use or conservation; and

(3) land which is used for the purpose of commercially producing an agricultural commodity which is located in an area designated as urban or rural.

SOURCE: GC §12392.6. Subsection (c) repealed by the effect of § 26112, enacted by P.L. 18-29:8. Subsection (b)(1) amended by P.L.24-009:1

17 GCA § 26108. Powers of Districts and Directors.

A district organized under this Article, and the directors thereof, shall have, in addition to other powers granted in other sections of this Article, the following powers:

(a) To provide for and encourage surveys, investigations, and research relating to soil and water conservation and to publish and disseminate information concerning such subjects;

(b) To provide for and encourage demonstrations relative to the control and prevention of erosion and the conservation of soil and water resources and carry out preventive control measures on publicly owned land within the district with the consent of the occupier of the land;

(c) To cooperate, or enter into agreements with, and to furnish aid to any agency or occupier of land within the district insofar as it is feasible to do so, for specific soil and water conservation activities not in conflict with or duplicating other activities of the University of Guam or cooperating agencies. Such agreements shall be subject to such conditions as the district board may deem necessary;

(d) To review conservation plans prepared by farm land owners and occupiers, which are a precondition for a contract between the farm land owners and occupiers and the U.S. Secretary of Agriculture; to provide to the U.S. Secretary of Agriculture or his designee a recommendation concerning the acceptability of farm land owners' and occupiers' plans, such recommendation to be based upon the district's conservation plan; and to provide, when requested by the Secretary or his designee, recommendations on the contract;

(e) To acquire property such as equipment or machinery to introduce soil conservation practices to the agricultural community and to dispose of such property when appropriate;

(f) To acquire private land or land rights through [the] Department of Land Management as needed for implementation of watershed projects for purposes such as flood control, irrigation, or soil conservation;

(g) To construct, improve, and maintain structures such as sediment ponds or earthen dams, following the requirements of the Guam Codes and proper engineering standards and specifications, when these structures are found necessary for carrying out the purposes of soil and water conservation;

(h) To develop conservation plans for cooperators of the district at their request;

(i) To have a seal which can be affixed to certificates issued to cooperators of the district and to any contract or other instruments;

(j) As a condition to the extending of benefits, or the performance of work upon land, the District may require contributions of services, materials or otherwise, to any operation conferring such benefits, and may impose any other reasonable condition, such as contributions of labor for the planting of trees and payment for specific erosion control materials secured by the district for the benefit of its cooperators. All such contributions would necessarily be determined by the District as a whole and would not be in violation of the laws of Guam or common practice.

SOURCE: GC §12392.7.

17 GCA § 26109. Budget.

The University of Guam shall include in its annual budget request to the Bureau of Budget and Management Research a budgetary plan which shall include estimates of the financial requirements of the soil and water conservation districts.

SOURCE: GC §12392.8.

17 GCA § 26110. Disposition of Unused Land.

Any land acquired by the Department of Land Management under § 26108(f) of this Article and not used for the purpose enumerated in § 26108(f) within five years of the acquisition, shall be returned to the original owners for the price paid by the Government when such property was originally acquired.

SOURCE: GC §12392.9.

17 GCA § 26111. Initial Reports Required.

Within six months from the date of passage of this Act, the Water and Soil Conservation Districts shall submit a progress report to the Legislature.

SOURCE: Section 2 of P.L. 17-51.

17 GCA § 26112. Board Compensation.

Members of the Soil and Water Conservation District shall be compensated in the amount of \$50.00 for attending a meeting, such compensation not to exceed \$100 per month.

SOURCE: GC §12392.10 added by P.L. 18-29:8.

17 GCA § 5B104. Pay Differential for NBPTS.

The Director of Administration shall determine, through rules and regulations, appropriate pay grades or differential amounts for teachers who are NBPTS certified. This Section shall apply to all NBPTS Certified teachers, not just those who received assistance under the provisions of § 5B102(c) of this Chapter.

SOURCE: Added by P.L. 25-84:1. Amended by P.L. 28-068:IV:42 and 47 (Sept. 30, 2005), effective January 1, 2006; reference to Civil Service Commission changed to Director of Administration.

19 GCA § 8318. Residence of Parties.

(a) A divorce or dissolution of marriage may be granted if one (1) of the parties has been a resident of Guam for at least ninety (90) days immediately preceding the filing of a complaint for divorce, or dissolution of marriage. For purposes of this Section, a person shall be deemed a resident if one (1) of the parties has been assigned with the U.S. Military to a unit on Guam or a ship home-ported in Guam for at least ninety (90) days immediately preceding the filing of a complaint for divorce or dissolution of marriage or if one (1) of the parties is physically present in Guam for at least ninety (90) days immediately preceding the filing of a complaint for divorce or dissolution of marriage. Physical presence by one of the parties in Guam for a period of ninety (90) days prior to filing of the action for divorce or dissolution of marriage shall give rise to a conclusive presumption of compliance with this Section.

(b) If both parties consent in writing to a divorce or dissolution of their marriage, a divorce or dissolution may be granted if one of the parties has resided in Guam for at least seven (7) days immediately preceding the filing of the complaint.”

SOURCE: CC § 128, amended by P.L. 13-165:3, as R/R by P.L. 17-81:26. Repealed/reenacted by P.L. 19-34:28. Amended by P.L. 27-129:1. Amended by P.L. 28-093:2 (Dec. 12, 2005), effective January 1, 2006.

COURT DECISIONS: Sections 8318 (prior to P.L. 27-129:1) and 8319 [Sections 128 and 129 of the Civil Code] have been declared to be contrary to the Organic Act of Guam in the case of *McAllister v. McAllister*, Dom. Case No. 1263-87 (Superior Court, 1988). The grounds stated were that these two sections were not laws of “local application” under the Supreme Court case of *Granville-Smith v. Granville-Smith*, 349 U.S. 1, 75 S.Ct. 553 (1955). Rather, these sections went beyond matters of “local application”, seeking to encourage persons not residents of Guam to obtain divorces in Guam.

19 GCA § 8319. Residence, Presumption of Jurisdiction.

(a) In actions for dissolution of marriage, neither the domicile nor residence of the husband shall be deemed to be the domicile or residence of the wife. For the purposes of such an action, each may have a separate domicile or residence depending upon proof of the fact and not upon legal presumptions. Physical presence in Guam for ninety (90) days next preceding the commencement of the action shall give rise to a conclusive presumption of residence in Guam as required by § 8318 of this Chapter. Allegations and proof of residence or other compliance with the requirements of § 8318 of this Chapter shall be pled or proved in any divorce or dissolution of marriage granted upon the consent of the Defendant, and the court shall make findings as to residency of any party to a divorce or dissolution of marriage or as to compliance with the requirements of § 8318 of this Chapter in any divorce or dissolution of marriage granted upon the consent of the Defendant. Residency must be pled and proved in all divorces or other actions for dissolutions of marriage. Only the parties (i.e., the husband or wife) or the court can raise the issue of or object to the jurisdiction of the Superior Court of Guam in an action for divorce or dissolution of marriage, residence of the parties, or other compliance with § 8318 of this Chapter in any case even where the defendant has consented to the divorce or dissolution of marriage. The Superior Court of Guam is not presumed to have jurisdiction over any action for divorce or dissolution of marriage which may be filed in the Superior Court of Guam because the defendant consents.

(b) All consents to a divorce or dissolution of marriage must be acknowledged or verified before a notary public or other officer authorized to administer oaths within the United States if signed in the United States, acknowledged or verified before a consular officer of the United States or other United States official authorized to take oaths if signed outside the United States, or have a notarized acknowledgement or verification by a foreign notary which is authenticated by a United States consular officer.

SOURCE: CC § 129, R/R by P.L. 17-81:27. Repealed/reenacted by P.L. 19-34:28 (effective date 12/19/88). Amended by P.L. 28-093:1 (Dec. 12, 2005), effective January 1, 2006.

19 GCA § 22108. Position Descriptions.

The Director shall develop within three (3) months of the effective date of this Act, position descriptions for all employees of the Agency for Human Resources Development which shall be subject to the approval of the Director of Administration.

COMMENT: Effective January 1, 2006, reference to the “Civil Service Commission,” amended to “Director of Administration” pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

CORRECTIONS

17 GCA § 18104. Educator Corps Director: Duties and Responsibilities.

The duties and responsibilities of the Educator Corps Director shall include:

- (a) serve as the chief officer of the Educator Corps;
- (b) administer the day-to-day operations of the Educator Corps;
- (c) screen applications and make recommendations to the Council for scholarship awards to Educator Corps candidates;
- (d) monitor the repayment of scholarships through appropriate employment service;
- (e) collect payments from scholarship recipients who have *not* met the employment service requirements herein;
- (f) review and make recommendations to the Council on requests for deferment of repayment through appropriate employment service of scholarship funds; and
- (g) perform any duties assigned by the Council or necessary for the effective and efficient operation of the Educator Corps.

19 GCA § 8404. Criteria and Procedure in Awarding Custody.

(1) In actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court may, during the minority of the child, make such order for the custody of such minor child as may seem necessary or proper. In awarding the custody, the court is to be guided by the following standards, considerations and procedures:

- (a) Custody should be awarded to either parent according to the best interest of the child.
- (b) Custody may be awarded to persons other than the father or mother whenever such award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall prima facie be entitled to an award of custody.
- (c) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, his wishes as to custody shall be considered and be given due weight by the court.

(d) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare and custody of any minor child of the parties. When so directed by the court, professional personnel of the Department of Public Health and Social Services shall assist the court by making investigations and reports which shall be made available to all interested parties and counsel before hearing, and such reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence provided the person or persons responsible for such report are available for cross-examination as to any matter which has been investigated.

(e) The court may hear the testimony of any person or expert produced by any party or upon the court's own motion, whose skill, insight, knowledge or experience is such that his testimony is relevant to a just and reasonable determination of what is to the best physical, mental, moral and spiritual well-being of the child whose custody is at issue.

(f) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify such modification or change, and whenever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award.

(g) Reasonable visitation rights shall be awarded to parents and grandparents and to any other person interested in the welfare of the child in the discretion of the court, unless it is shown that such rights of visitation are detrimental to the best interests of the child.

(h) It is legislative policy that children spend as much time with each of their parents as possible, when the parents are not living together. Therefore, in determining visitation of minor children on Guam with non-custodial parents living on Guam, the court shall, to the greatest degree possible, order visitation for minor children (pendente lite and permanently) with non-custodial parents such that the children spend more or less equal amounts of time with the custodial parent and the non-custodial parent during non-working, non-sleeping, non-school time, subject to the following:

- (1) The proposed visitation is not found by the court, on evidence presented, to be injurious to the welfare of the child;
- (2) The non-custodial parent is willing to accept such visitation;
- (3) The non-custodial parent is not found by the Court to be an unfit person to have such visitation;

(4) The visitation is not found by the Court to interfere with the child's schooling;

(5) Unless the Court finds that it is not in the best interests of the child, non-custodial parents or the children's grandparents shall be given consideration in providing child-care for their minor children or grandchildren, when visitation orders are prepared;

(6) In determining visitation rights under this subsection (h), the court shall take into account the employment of each parent and the time the child spends in school or in extracurricular activities;

(7) Based on proof presented, the court may take into account other factors respecting visitation which would affect the welfare of the minor child or children;

(8) The court may also take into account the time a child spends with each parent and the expense incident thereto in awarding child support;

(9) The court may make such orders as are appropriate in carrying out the provisions of this subsection (h);

(10) This subsection (h) shall be effective only as to actions or motions filed after its effective date, and shall not apply to any actions or motions filed prior to its effective date. In addition, enactment of this subsection (h) shall not, in and of itself, constitute a change in circumstances as to warrant the re-opening of custody proceedings for which orders had been entered prior to such enactment.

(i) It is legislative policy that children should not be exposed to family violence because, even when they are not themselves physically assaulted, they suffer deep and lasting emotional effects from exposure to family violence; and

(j) The Court may award visitation or custody to a parent who committed family violence only if the Court finds that adequate provision for the safety of the child and the parent who is a victim of family violence can be made; and

(k) In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, the finding that family violence has occurred since the last custody or visitation determination constitutes a finding of a change of circumstances; and

(l) In a custody or visitation order, a Court may:

(1) order an exchange of a child to occur in a protected setting;

(2) order visitation supervised by another person or agency;

(3) order perpetrator(s) of family violence to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;

(4) order either parent or other party to a custody or visitation order to abstain from consumption of alcohol or other intoxicants during the visitation and for twenty-four (24) hours preceding the visitation;

(5) order perpetrator(s) of family violence to pay a fee to defray the costs of supervised visitation, or to pay for the services of a guardian ad litem appointed by the court;

(6) prohibit overnight visitation;

(7) require a bond from perpetrator(s) of family violence for the return and safety of the child; or

(8) impose any other condition that is deemed necessary to provide for the safety of a child, a victim of family violence, or other family or household member.

(m) Whether or not visitation is allowed, the Court may order the address of a child or a victim to be kept confidential.

(n) If the Court allows a family or household member to supervise visitation, the Court may establish conditions to be followed during visitation.

(o) In addition to other factors that the Court must consider in a proceeding in which the custody of a child, or visitation by a parent is at issue and in which the Court has made a finding that family violence has occurred:

(1) the court shall consider as primary the safety and well-being of the child(ren) and of a parent or guardian who is the victim of family violence; and

(2) the court shall consider the perpetrator's history of causing or attempting to cause bodily injury to another family or household member; or placing a family or household member in fear of bodily injury.

(p) If a parent or guardian is absent or relocates because of an act of family violence by the other parent, the absence or relocation is not a

factor that weighs against the parent or guardian in determining custody or visitation, so long as the child(ren) are not removed from Guam without prior Court authorization.

(2) Mediation.

(a) Unless otherwise provided by law, the Court, in cases pursuant to this Section may order the parties to be referred to Mediation with respect to custody and visitation in accordance with the standards set forth in Part 1 of this Section and rules and regulations established and promulgated by the Supreme Court of Guam.

(b) The Supreme Court of Guam shall establish and promulgate any rules and regulations necessary to carry out the provisions of this Section, and mediators shall be selected and compensated in accordance with rules and regulations established by the Court. The rules and regulations promulgated by the Supreme Court pursuant to this Section shall be submitted to *I Liheslaturan Guåhan* for approval. Said rules and regulations shall be deemed approved unless otherwise acted upon by *I Liheslaturan Guåhan* within ninety (90) days of receipt.

(c) Mediation should be accessible to all parties regardless of financial status, and the Judicial Council of Guam is authorized to enact fees to implement the provisions of this Section.

SOURCE: CC §138.1. Subsection (g) amended by P.L. 14-64:1. Subsection (h) added by P.L. 19-53:2. Subsections (i) - (p) added by P.L. 24-239:22-29. Part 2 added by P.L. 27-79 (May 6, 2004).