

September 26, 2008

Dr. Nerissa Bretania-Shafer
Superintendent
Guam Public School System
P. O. Box DE
Hagatna, GU 96932

Dear Superintendent Bretania-Shafer:

We are in receipt of your response dated July 31, 2008, and subsequent correspondence dated August 19, 2008, which were intended to address the concerns outlined in the correspondence from the U.S. Department of Education (USDOE) to you dated June 16. We also requested an opinion of the Guam Attorney General on the governance of the Federal education grants, which we received on September 24, 2008 in the form of a legal opinion that addressed the governance issues and ultimately identified the Guam Public School System (GPSS) and the Superintendent as the entity and the official accountable to the USDOE for ensuring appropriate use of Federal education funds.

The purpose of this correspondence has been to help resolve the issue of management instability that the USDOE believes has affected GPSS's management and implementation of Federal education grant programs, especially those that have arisen in the past couple of years. Since 2003, GPSS has been designated by USDOE as a "high-risk" grantee under 34 C.F.R. § 80.12 because of significant problems in the areas of Single Audit Act compliance and fiscal accountability, which continue to affect the organization as evidenced in the most recent fiscal year (FY) 2007 Single Audit report and procurement management report prepared by the Guam Office of the Public Auditor. The specific challenges associated with GPSS management that had arisen most recently, were having a direct impact on the ability of GPSS to effectively use Federal funds to serve its students. Thus, we determined that it was critical to thoroughly address the issue of management of GPSS relative to administration of USDOE grants prior to USDOE's award of FY 2008 grants to GPSS.

We appreciate the efforts and actions taken by the Guam government to address the concerns described in my June 16 letter, including the selection and appointment of a permanent GPSS Superintendent, and the subsequent legal opinion provided by the Guam Attorney General to clarify the roles and responsibilities for governance of Federal education grants as administered by GPSS. We are now in a position to award FY 2008 grants, including continuation awards, to GPSS.

Special conditions will continue to apply to FY 2008 program grants and funds awarded by the Department to GPSS, and funds from earlier grants to GPSS that are still available for obligation and liquidation. In conjunction with GPSS' continuing "high-risk" designation under 34 C.F.R. § 80.12, enclosed are the special conditions that will be included with the grant award documents accompanying the grant awards made by the Department to GPSS for all of the Federal education programs it administers. The special conditions include a drawdown restriction, which will allow GPSS to draw down only up to 50% of its grant award amount under each Department program, including programs under the Consolidated Grant and those not under the Consolidated Grant, unless it receives written approval from the Department to draw down a larger amount. This restriction will be removed once GPSS has satisfied the conditions as outlined in the special conditions document.

If you have any questions or require further assistance, please have your staff contact Christine Jackson, the primary contact for the Management Improvement Team of the Risk Management Service within the Office of the Secretary, at (202) 260-2516 or via e-mail at christine.jackson@ed.gov. We are hopeful that GPSS will be able to rebound from the challenges that it has faced and forge ahead to make the necessary improvements that would result in the effective administration of Federal education grants, and directly benefit the students in Guam. We look forward to continuing the partnership established with you and the GPSS staff.

Sincerely,

/s/ Philip A. Maestri

Philip A. Maestri
Director
Risk Management Service
Office of the Secretary

cc: Governor of Guam
Speaker, Twenty-Ninth Guam Legislature
Guam Attorney General
Guam Congressional Delegate
Chair, Guam Education Policy Board

Guam Public School System – Special Conditions
Federal Fiscal Year 2008

PREAMBLE: These special conditions are imposed on the Guam Public School System (GPSS) program grants issued by the U.S. Department of Education (Department) on or after the date of these special conditions. Additionally, the special conditions apply to grant funds previously awarded by the Department to GPSS that are still available for obligation or liquidation on the date of these special conditions. These special conditions are applied to these program grants and funds in accordance with the Department's regulations governing "high-risk" grantees in 34 C.F.R. § 80.12. The special conditions are imposed to help ensure that GPSS implements Department grant awards in accordance with applicable legal requirements and with appropriate fiscal accountability measures and management practices and controls.

I. BACKGROUND

In September 2003, the Department designated GPSS (then the Guam Department of Education or GDOE) a "high-risk" grantee under the authority of the Education Department General Administrative Regulations (EDGAR), 34 C.F.R. § 80.12. This was based on the Department's concern about the lack of fiscal and programmatic accountability in the administration of Federal education programs by GPSS, as evidenced by GPSS's failure to provide the Department with timely and complete single audits, as required by the Single Audit Act, and by the auditors' declaration that GPSS's records for fiscal years (FYs) 1998-2000 were unauditible.

GPSS has since submitted single audits for FYs 2001-2007, but they have been qualified for major fiscal and program compliance with reportable conditions that are material with questioned costs. The single audit findings indicate that GPSS continues to have problems in the areas of adequate internal controls, including accounting and reconciling its financial records for Department grant funds in accordance with Federal requirements; implementing subrecipient monitoring to ensure that grant and subgrant-supported activities are carried out in accordance with Federal program statutes, regulations, and other requirements; instituting procurement and property management processes that comply with Federal requirements; and implementing appropriate cash management procedures. In addition, GPSS is still in the process of correcting a number of findings from these past audits.

In the special conditions imposed on GPSS's FY 2007 grant awards, the Department required GPSS to develop a Comprehensive Corrective Action Plan (CCAP) to address the underlying problems associated with its high-risk designation. GPSS developed a CCAP but has not demonstrated adequate progress in implementing the CCAP as evidenced by the CCAP report that it submitted on July 31, 2008. The report demonstrates that GPSS has failed to implement a number of key action steps by the established completion dates and has revised a significant number of completion dates, thus delaying the progress necessary to ensure that GPSS will achieve compliance with requirements for the administration and management of Department grant awards. In

particular, GPSS has not made any substantial progress in its Financial Management Improvement Plan (FMIP), a core feature of the CCAP that involves instituting a Financial Management Improvement System (FMIS) that will enable GPSS to significantly improve the financial management of Department grant awards.

The Department has expressed numerous concerns about the need for stability in GPSS's management and views this as a critical need in GPSS's ability to effectively implement the action steps and achieve the objectives of the CCAP. The clarification provided by the Guam Attorney General opinion, dated September 24, 2008, regarding the authority of Guam offices and officials relative to the management and administration of USDOE-funded programs (Opinion, Our ref: GPSS 08-0717) has provided important legal guidance for maintaining that stability, and helping to ensure that the special conditions set forth in this document can be met. In that regard, the Department recognizes the Management Team that the GPSS Superintendent plans to establish to assist with the administration of Department grant awards as integral to GPSS's efforts in implementing the CCAP.

Finally, the Department conducted site visits to GPSS in January 2008 and August 2008. Based on these site visits, the Department has concluded that GPSS must:

1. Continue to ensure that management stability is maintained and remains an integral component for undergirding the organization's efforts to establish and sustain the necessary internal controls to institutionalize fiscal and management improvements.
2. Continue to develop and implement interim strategies for strengthening its fiscal and accounting operations to ensure continuity of fiscal accountability, specifically to address any material weaknesses identified in the FY 2007 single audit related to reconciling the general ledger and maintaining its accounting records.
3. Continue to ensure that staff training is provided at the central office and school level regarding the policies and procedures that GPSS establishes via Standard Operating Procedures (SOPs) and that the SOPs are implemented to correct problems in GPSS's management and administration of Department grant funds.
4. Continue to strengthen the subrecipient monitoring process within its Federal Programs Administration to ensure consistency and accuracy among program monitors responsible for oversight of programs implemented with Department grant funds and for ensuring compliance with applicable Federal requirements.
5. Ensure that the contract with MGA Consulting provides the desired outcome of improving GPSS' financial management. Since the implementation of

this contract has apparently not begun and its scope may be limited solely to general ledger processes, GPSS should reexamine the scope of this contract and determine whether it should include a more thorough implementation plan that includes dates for completion of action steps.

6. Work in collaboration with various Guam government stakeholders, such as the Governor, Guam Legislature, and Office of the Public Auditor to implement the independent Management Audit of Academic Programs and Operational Services contract. The contract is intended to evaluate GPSS's current operations, and be a mechanism to further enhance efforts to increase efficiencies throughout its organization. This will provide pertinent information for GPSS to consider as part of its long-term solutions.

The Department acknowledges that GPSS has been working to implement SOPs and other corrective actions designed to address the single audit findings, as well as addressing other fiscal accountability problems identified prior to and during the Department's recent site visit. In addition, although there has not been sufficient progress, the Department acknowledges that GPSS has been working to implement the CCAP. The Department has determined that the CCAP must be refined to include specific subtasks and discrete timelines that will enable the Department to make an accurate assessment of GPSS's progress at various designated intervals.

II. SPECIAL CONDITIONS

A. Comprehensive Corrective Action Plan (CCAP)

1. GPSS and the Department worked together to develop a CCAP that contains tasks, goals, measurable objectives, and completion dates for the tasks. The tasks that GPSS must implement are designed to address and resolve the problems that led the Department to designate GPSS as a "high-risk" grantee. The CCAP became final in October 2007. GPSS and the Department have agreed that the CCAP is the primary mechanism for assisting the Department and GPSS in tracking progress toward improving GPSS management and administration of Department grant funds.

GPSS must evaluate the tasks and completion dates in the CCAP, determine changes needed in the tasks and in the completion dates that will permit it to fully and effectively implement the goals of the CCAP, and prepare a revised version of the CCAP reflecting those changes. GPSS must submit the revised version of the CCAP to the Department no later than October 17, 2008. The Department will review the revised version of the CCAP and notify GPSS as to whether it is approved or whether further changes are necessary. If further changes are needed, the Department will provide further input regarding submission of a further revised CCAP and approval thereof.

2. GPSS must provide a biannual report to the Department on its progress in implementing measures required under the CCAP, including the current status of GPSS's implementation of the various measures and, if necessary, any changes in the targeted completion dates included in the CCAP. Once GPSS has obtained approval from the Department of the revised version of the CCAP, GPSS should make every effort to avoid the need to change targeted completion dates. The dates for submission of the CCAP reports are:
 - January 31, 2009 (covering the period of July 1 through December 31, 2008)
 - May 31, 2009 (covering the period of January 1 through April 30, 2009) (in order to have updated information for funding decisions associated with the release of FY 2009 grant awards)

The Department acknowledges, and GPSS should be aware, that in light of the anticipated revised CCAP, the CCAP report that is due by January 31, 2009 will cover GPSS's progress under the current CCAP, as well as any progress that GPSS has made under the revised CCAP, once approved.

B. Drawdown Restriction

With respect to grant funds that GPSS receives on or after the date of these special conditions, GPSS will be permitted to draw down only up to one-half (50%) of its grant award under each Department program including those programs funded under the Consolidated Grant and other programs, such as the Grants to States and Early Intervention programs authorized by Parts B and C of the Individuals with Disabilities Education Act (IDEA), that are not part of the Consolidated Grant, unless it receives written approval from the Department to draw down a larger amount. This drawdown restriction will remain in effect pending:

1. The Department's approval of the revised CCAP, as required in section II.A.2 above;
2. GPSS's submission of the CCAP biannual report due January 31, 2009 describing its progress in implementing measures under both the current and approved-revised CCAP and a determination by the Department that based on the report and other information the Department has available, GPSS is making substantial progress under the CCAP; and
3. GPSS's demonstration of stability in program administration by its compliance with program requirements and the special conditions on grant awards made under the Department's programs.

C. Assurances

GPSS must provide the Department with a written assurance that necessary improvements in internal controls will be reinforced by management stability within its

organization in accordance with the Attorney General's legal opinion dated September 24, 2008. Management stability is essential as the underlying infrastructure needed for GPSS to implement improved internal controls necessary to meet Federal program requirements. Such stability affects the extent to which the CCAP momentum and continued progress in implementing the Federal education programs are maintained.

D. Single Audits

GPSS must continue to ensure that its single audits are conducted, and audit reports submitted, on an annual basis in a timely and complete manner. All single audits must be completed and the reports published within nine months after the end of each fiscal year, as required by the Single Audit Act, as amended. If, for any reason, GPSS expects an audit or report to be delayed and late, it must notify the Department's contact person of the reason and extent of the delay as soon as possible.

E. Prompt Access

GPSS shall promptly provide the Department or its representatives access to any requested staff, locations, records, and information associated with the affected grant funds.

F. Program-Specific Conditions

In addition to the special conditions that are contained in this document, special conditions may be imposed on FY 2008 grant awards made under one or more Department programs to address areas in which GPSS is out of compliance with program requirements. Each such program-specific special condition will be contained in an attachment to the grant award notification document in question that is provided by the Department to GPSS.

G. Compliance with Program Requirements

In addition to complying with any program-specific special conditions imposed on its Department grant awards, GPSS must timely and fully comply with all programmatic requirements under the statutes and regulations governing the programs under which it receives grant awards. In addition to the reporting required under Section II.A of these special conditions, GPSS must fully meet all specific program reporting requirements on a timely basis, including, but not limited to, submission of the Individuals with Disabilities Education Act (IDEA) Parts B and C Annual Performance Reports and the annual performance report required for the Consolidated Grant under section 76.132(a)(5) of EDGAR. GPSS must also work cooperatively with, and respond to requests for information from, the Department's program offices responsible for administering the various grant programs under which GPSS receives funds. These requests for information are part of the technical assistance that the program offices provide to GPSS and are designed to assist GPSS in properly implementing programs, projects, and activities under the grant awards that it receives from the Department.

H. Failure to Comply with Conditions

If a report or other submission required under Section II.A, B, C, or D above is not submitted on a timely basis or is not considered acceptable by the Department, or if GPSS has not complied with Sections II.F or G of these special conditions concerning program-specific requirements, or if the Department determines that GPSS has not made substantial progress in meeting the objectives of one or more grant programs or of the CCAP (whether the current or revised version), the Department may implement one or more remedies for the affected programs, including, but not limited to, the following:

1. The Department would impose additional special conditions on one or more of GPSS's grant awards;
2. GPSS would receive no further funds under the grant award or would receive funds only on a reimbursement basis;
3. The Department would delay awarding of, or withhold, all or part of one or more grant awards to GPSS;
4. The Department would recover misspent funds from GPSS; and
5. The Department would require GPSS to contract with a third party, who must be approved by the Department, to provide financial management and other administrative responsibilities for one or more grant awards. The third party would, at a minimum, assist in preparing vouchers or other documentation to be submitted to the Department for reimbursement, and would verify their accuracy and legitimacy of expenditures as appropriate under applicable grant awards.

III. OTHER TERMS

A. Enforcement

If GPSS fails to meet any of the above special conditions, the Department is authorized to take other appropriate enforcement action. These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other actions at any time.

B. Submission of Reports

All reports or other submissions that GPSS is required to submit to the Department under these special conditions must be sent to:

Christine Jackson
 400 Maryland Avenue, S.W.
 LBJ, Room 7E230
 Washington, DC 20202

C. Reconsideration and Modifications

At any time, GPSS may request reconsideration of the above special conditions by contacting the Department contact named above, and stating in writing the reasons why GPSS believes particular conditions are no longer needed. Additionally, the Department may impose additional special conditions or modify these special conditions as appropriate. The Department will remove the special conditions at such time as GPSS meets, to the Department's satisfaction, the conditions mentioned above.

Dated: September 26, 2008