



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF FINANCE AND OPERATIONS  
OFFICE OF ACQUISITION, GRANTS, AND RISK MANGEMENT

October 19, 2023

Superintendent Erik Swanson  
Guam Department of Education  
500 Mariner Avenue  
Barrigada, Guam 96913

Dear Superintendent Swanson:

The purpose of this letter is to communicate the U.S. Department of Education's (ED or Department) determination that, based on the notable progress made by the Guam Department of Education (GDOE) to resolve many longstanding fiscal issues, the Department is removing the third-party fiduciary agent requirement (TPFA) included in your FY2023 Departmentwide specific conditions. This decision is based, in part, on the observations made during the Department's onsite visit conducted by the Grants Risk Management Services Division (GRMSD) on September 11-15, 2023. The primary focus of the visit was to document progress of the pending items within your Reconsideration Evaluation Plan (REP), as well as your organization's readiness to transition from TPFA oversight, which coincided with the conclusion of the 6-month probationary period for your approved Transition Plan.

We want to acknowledge the timeliness of the receipt of your monthly Transition Plan Status Updates for our review. Your diligence was especially appreciated as you and your staff recovered from the devastation of the recent Typhoon Mawar.

The enclosed document, "Decision of U.S. Department of Education Concerning Removal of Guam Department of Education's Required Third-Party Fiduciary Agent (Decision)," summarizes the basis for the Department's decision to remove the requirement that GDOE must have a TPFA to perform its financial management duties for all ED grants. The Decision is based on an Onsite Reconsideration Evaluation Plan and Transition Plan Assessment Report for the Guam Department of Education (Onsite Assessment Report), which summarizes the Department's onsite visit with both observations and recommended enhancements for GDOE to incorporate into its business operations as it resumes control of all operations in the post-TPFA environment. The Onsite Assessment Report will follow under separate cover to your attention within the next two (2) weeks.

It is anticipated that GDOE will continue to work towards sustained progress, including the criteria needed to ultimately remove GDOE's high-risk designation. These criteria will be more

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fully outlined as part of the FY2024 Departmentwide specific conditions attached to GDOE's FY2024 grant awards. Further the Department notes that 17 items in GDOE's REP remain to be completed.

GDOE should note that, as necessary, program-specific specific conditions may be imposed on FFY 2024 grant awards made under one or more Department programs to address areas in which GDOE is out of compliance with any program requirements. Each such program-specific specific condition will be contained in an attachment to the grant award notification document in question that is provided by the Department to GDOE.

In addition to complying with any program-specific specific conditions imposed on its Department grant awards, GDOE must timely and fully comply with all applicable programmatic requirements under Federal laws and regulations. GDOE 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 State Performance Plans (SPPs)/Annual Performance Reports (APRs), and the annual performance report required for the Consolidated Grant under section 76.132(a)(5) of EDGAR. GDOE must also work cooperatively with, and respond to requests for information from, Department program offices responsible for administering the various grant programs under which GDOE receives funds. These requests for information are part of the technical assistance that the program offices provide to GDOE and are designed to assist GDOE in properly implementing programs, projects, and activities under the grant awards that it receives from the Department.

Failure to comply with any of these specific conditions will negatively impact GDOE's ability to continue to receive grant funds from the Department. These terms and conditions do not preclude the Department from taking any authorized enforcement or other actions at any time, including, but not limited to, withholding of Department funds.

Department staff will continue to engage with you and your leadership team as you make continued progress in the post-TPFA environment. In addition to the monthly status meetings that have been established and will continue, the Department will work with you to establish quarterly progress reporting as another method of communication to gauge your progress. These reports or other submissions that GDOE is required to submit in response to pending REP items should be sent via email to Christine Jackson at [Christine.jackson@ed.gov](mailto:Christine.jackson@ed.gov). Submission dates are as follows: July 1, 2024-September 30, 2024, submission by October 15, 2024; October 1, 2024-December 31, 2024, submission by January 15, 2025. The Department will reassess the effectiveness of GDOE's operations after this time.

If you have any questions or would like to discuss the Onsite Assessment Report (after receipt) and/or the status of the REP, please contact Christine Jackson, Grants Risk Management Services Division, Office of Acquisition, Grants, and Risk Management, Office of Finance and Operations, at (202) 615-3663 or via e-mail at [christine.jackson@ed.gov](mailto:christine.jackson@ed.gov).

Sincerely,

Kerry K. Neal  
Deputy Assistant Secretary  
Office of Acquisition, Grants, and Risk Management

Enclosure

cc: Governor Lou Leon Guerrero  
Mary Okada, Chair, Guam Education Board  
Mary Gutierrez, Vice Chair, Guam Education Board  
Congressman James Moylan

## **Decision of U.S. Department of Education Concerning Removal of Guam Department of Education's Required Third-Party Fiduciary Agent**

The purpose of this document is to set forth the basis for the U.S. Department of Education's (ED or Department) decision to remove the requirement that the Guam Department of Education (GDOE) must have a third-party fiduciary agent (TPFA) to perform its financial management duties for all ED grants.

### **Background:**

In September 2003, ED designated GDOE a "high-risk" grantee based on ED's determination that GDOE lacked fiscal and programmatic accountability in the administration of Federal education programs. In 2007, ED required GDOE to develop a Comprehensive Corrective Action Plan (CCAP) to address the lack of progress to the identified noncompliance. Due to the lack of progress made with the CCAP, in November 2009, ED issued special conditions which required GDOE to procure the services of a TPFA to perform the financial management duties required under Federal regulations for all ED grant awards made to GDOE. In 2010, GDOE contracted with Alvarez and Marsal (A&M) for Third-Party Fiduciary Oversight and Funds Management. A&M has served in that position since that time.

Since the implementation of the TPFA, GDOE has made significant process under its CCAP, including the implementation of Tyler Technologies' MUNIS system as its new central financial management information system (FMIS). In May 2018, GDOE requested reconsideration of their specific conditions, including the TPFA requirement, which led to the creation of a Reconsideration Evaluation Plan (REP) dated January 30, 2019. The REP replaced the CCAP as the document against which GDOE's progress would be measured. In the Federal Fiscal Year (FFY) 2022 GDOE Specific Conditions, as a result of this significant progress, ED removed 18 of the 22 responsibilities and requirements previously included for the TPFA. Additionally, ED added a new requirement for the TPFA to work with GDOE to return all Purchase Order (PO) functions performed within GDOE's procurement process back to GDOE's control within the GDOE MUNIS Procurement Module. The purpose of this new requirement was to help GDOE transition successfully into being fully responsible for all PO functions.

In December 2022, ED sent GDOE a letter further acknowledging GDOE's progress in strengthening its internal controls. The December letter stated that GDOE would begin, when it indicated readiness to do so, a probationary period of six months during which it would have the opportunity to demonstrate readiness to transition fiscal management functions from the TPFA back to GDOE. Prior to the probationary period starting, GDOE was required to submit a detailed transition plan (Transition Plan) proposing how GDOE would demonstrate its readiness and ability to assume full responsibility for financial management of its ED grants. The probationary period would begin once ED had reviewed and approved GDOE's Transition Plan.

In March 2023, GDOE submitted its six-month Transition Plan to define the roles and responsibilities that would be assumed by GDOE during the probationary period. These roles and responsibilities are related to five areas: employee time tracking (ETT), Financial Management Information System (FMIS), internal controls, procurement, and property management. The plan

described how GDOE would, during the probationary period, gradually assume all fiduciary responsibilities, with the TPFA in a reduced oversight and advisory role.

Consistent with the FFY 2023 GDOE Specific Conditions, in September 2023, a senior official from ED's Grants Risk Management Services Division (GRMSD) visited Guam to assess GDOE's progress during its six-month probationary period. Specifically, the purpose of the visit was to determine the degree to which GDOE was able to demonstrate its readiness to permanently transition from the requirement of TPFA oversight and management of Department funds such that the TPFA requirement could be removed, as well as whether GDOE's high-risk designation should be removed.

#### GDOE Progress in Five Transition Plan Areas:

GDOE's March 2023 Transition Plan detailed five areas in which GDOE would assume management responsibilities during the six-month transition period. Consistent with the plan, during the preceding six months, GDOE assumed all fiduciary responsibilities in these five areas. Below is a summary of GDOE's progress in each of these areas.

- 1) *Employee Time Tracking*: The focus of this area was the lack of time and effort processes supported by both effective checks and balances and automation. Before the beginning of the six-month transition period, GDOE had not demonstrated that it had processes in place to ensure that all Federally-funded staff were included and trained in an automated ETT process that met all Federal requirements.

As reflected in the Specific Conditions, the REP and the Transition Plan, as the prerequisite to removal of the TPFA, GDOE was required to demonstrate that it had taken all necessary actions to render it capable of performing the financial management responsibilities being performed by the TPFA. This includes responsibility for implementing and managing an ETT system in compliance with Federal requirements.

Based on documented progress during the six-month transition period, as observed during the onsite visit, and as reflected in more detail in the Onsite Reconsideration Evaluation Plan and Transition Plan Assessment Report for the Guam Department of Education (Onsite Assessment Report)<sup>1</sup>, ED concludes that GDOE has met this standard with regard to this area. GDOE has implemented an automated ETT system that will allow it to meet all Federal requirements related to ETT and has developed and implemented plans to ensure that GDOE staff will follow related SOPs that comply with Federal requirements. At the time of the visit, some GDOE staff who work on Department programs were not yet included in the automated ETT system; however, they have been trained on the SOPs related to the system and will be included in the system in coming weeks.

- 2) *Financial Management Information System (FMIS)*: The focus of this area was the inability of GDOE to maintain sufficient staff in its Business Office and the inability of

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<sup>1</sup> The Onsite Assessment Report will be sent to GDOE separately from this Decision document.

GDOE staff to update SOPs to align to periodic upgrades to the GDOE MUNIS financial system. Additionally, there was insufficient segregation of duties to ensure sufficient internal financial controls.

As reflected in the Specific Conditions, the REP and the Transition Plan, as the prerequisite to removal of the TPFA, GDOE was required to demonstrate that it had taken all necessary actions to render it capable of performing the financial management responsibilities being performed by the TPFA. This includes implementing its FMIS in compliance with Federal requirements.

Based on documented progress during the six-month transition period, as observed during the onsite visit, and as reflected in more detail in the Onsite Assessment Report, ED concludes that GDOE has met this standard with regard to this area. GDOE migrated data from the TPFA MUNIS system to the GDOE MUNIS system and demonstrated that it has established procedures to ensure that SOPs are aligned to the GDOE MUNIS system, including a process to ensure alignment as the system is upgraded. Additionally, GDOE has established internal controls to ensure appropriate segregation of duties, as well as established plans to ensure the hiring and retention of highly qualified staff. These developments will ensure that GDOE is implementing an FMIS that meets Federal requirements.

- 3) *Internal Controls*: The focus of this area was the absence of documented evaluation and testing of approved critical SOPs by the GDOE Internal Auditor's Office (IAO) and the inability of GDOE to maintain sufficient staff in its IAO, which is necessary to complete evaluation and testing of approved SOPs. Additionally, ED had noted insufficient internal accountability and transparency (e.g., lack of GDOE response to IAO findings, insufficient enforcement actions from IAO in response to issues), and insufficient processes to ensure that staff consistently followed approved SOPs.

As reflected in the Specific Conditions, the REP and the Transition Plan, as the prerequisite to removal of the TPFA, GDOE was required to demonstrate that it had taken all necessary actions to render it capable of performing the financial management responsibilities being performed by the TPFA. This includes implementing and maintaining a system of internal controls that will ensure compliance with Federal requirements.

Based on documented progress during the six-month transition period, as observed during the onsite visit, and as reflected in more detail in the Onsite Assessment Report, ED concludes that GDOE has met this standard with regard to this area. GDOE demonstrated an enhanced role for the IAO in ensuring accountability, transparency, and oversight of GDOE. Notably, the Guam Education Board (GEB) and Guam Legislature and Office of Public Accountability have approved a new organizational structure for the IAO that will ensure that the IAO has primary responsibility for GDOE internal control oversight and

will serve as an independent reviewer of all GDOE internal processes. Additionally, the GEB and IAO have established new processes and groups that will provide additional oversight and accountability for the management of ED grants.

The strengthened roles and process for the IAO will ensure that GDOE is able to independently implement and maintain a system of internal controls that meets Federal requirements.

- 4) *Procurement*: The focus of this area was implementing sufficient processes to ensure that GDOE staff complied with established procurement SOPs and procedures, including to ensure that there were consequences in place for any GDOE staff found non-compliant with established procurement SOPs. ED had noted untimely expenditure of Federal grant funds for a high volume of technology assets and other purchases, as well as delays in processing vendor payments.

As reflected in the Specific Conditions, the REP and the Transition Plan, as the prerequisite to removal of the TPFA, GDOE was required to demonstrate that it had taken all necessary actions to render it capable of performing the financial management responsibilities being performed by the TPFA. This includes implementing and maintaining a procurement system that will ensure compliance with Federal requirements.

Based on documented progress during the six-month transition period, as observed during the onsite visit, and as reflected in more detail in the Onsite Assessment Report, ED concludes that GDOE has met this standard with regard to this area. GDOE demonstrated that procurement transactions are now processed through GDOE's MUNIS procurement system, allowing GDOE to manage procurements independently. Additionally, GDOE has increased staff capacity, through trainings and hiring, to more timely process procurements.

GDOE's MUNIS procurement system, as well as GDOE's new processes to ensure staff training and capacity to implement the system, will ensure that GDOE independently implements and maintains a procurement system that meets Federal requirements.

- 5) *Property Management*: The focus of this area was occupancy and functionality of GDOE central warehouse that is accompanied by updated SOPs that govern the daily activities of the Property Management Staff. ED had noted that Federally-purchased technology assets were stored in areas that could result in damage, there were not processes to allow for the delivery of equipment to schools, and there was no records management SOP to ensure the confidentiality of files containing students' personally identifiable information (PII).

As reflected in the Specific Conditions, the REP and the Transition Plan, as the prerequisite to removal of the TPFA, GDOE was required to demonstrate that it had taken all necessary actions to render it capable of performing the financial management responsibilities being performed by the TPFA. This includes having a property management system that will ensure compliance with Federal requirements.

Based on documented progress during the six-month transition period, as observed during the onsite visit, and as reflected in more detail in the Online Assessment Report, ED concludes that GDOE has met this standard with regard to this area. GDOE has demonstrated that it now has enhanced processes to ensure proper storage of technology-related equipment and to deliver equipment to schools. While GDOE did not, at the time of the onsite visit, have a final SOP related to storage of files containing students' PII, the SOP has been drafted and is awaiting final approval.

#### Overall Progress:

As described above, GDOE has demonstrated that it no longer relies on the TPFA to implement its Federal education grants in compliance with Federal rules. In the six-month transition period, ED has observed that GDOE has demonstrated that it is capable of performing the financial management responsibilities in the areas that had been performed by the TPFA.

#### Department Action:

Based on this assessment of GDOE's progress during the last six months, as observed during the onsite visit, and as reflected in more detail in the Onsite Assessment Report, ED is removing from the FY 2023 GDOE specific conditions the requirement for a TPFA, effective October 31, 2023. While ED is removing the requirement for TPFA, GDOE's high-risk designation will remain in place. ED further anticipates that it will require some additional monitoring or possibly an independent audit with regard to the areas over which GDOE has assumed full responsibility. The details of these requirements will be incorporated into future specific conditions issued by ED. In addition, there are 17 pending REP items, but those items do not require TPFA involvement. These items will also be incorporated into the future specific conditions issued by ED.

The following is a summary of specific immediate and long-term next steps for both the Guam Department of Education (GDOE) and the U.S. Department of Education (ED):

#### Next Steps for GDOE:

- ❖ Notify the Department when the following GDOE positions have been filled with permanent staff: CFO, Deputy of Finance and Administration, and Federal Programs Administrator
- ❖ Provide the Department an updated GDOE organizational chart with identified GDOE staff positions that will replicate current TPFA roles and responsibilities.



- ❖ Provide the Department copies of both the updated Internal Audit Work Plan and FY2024 Management Internal Controls (MIC) results once completed.
- ❖ Submit supporting documentation for pending REP items for virtual validation by Department staff.
- ❖ Submit the final FY2022 physical inventory report to the TPFA as well as to the Department for review.
- ❖ Finalize the SOP for addressing property management staff use of both locally and federally funded vehicles.
- ❖ Work with the Bruman team to focus on the elimination of any paper-based processes that can be captured electronically in MUNIS, including the procurement of scanners for fixed assets for use by Property Management Officers.
- ❖ Work with the Bruman team to outline strategies to strengthen the role of the Internal Audit Office to oversee internal control processes and establish a collaboration with the Gov Guam Internal Audit Committee.
- ❖ Provide a copy of the FY2024 Internal Audit Office (IAO) work plan. This plan should include an IAO Audit and Compliance Report requiring a written management response to any identified findings from designated GDOE responsible staff, and appropriate consequences if ignored.

**Next Steps for the Department:**

- ❖ GRMSD will issue a formal TPFA removal letter to GDOE leadership prior to the October 31, 2023 TPFA contract expiration date.
- ❖ GRMSD will continue to work with the GDOE Internal Audit Office as pending REP items are completed.
- ❖ GRMSD will continue to communicate with the GDOE leadership and its high-risk consultants on a monthly basis to discuss any updates or challenges.
- ❖ GRMSD will work with GDOE leadership to develop a quarterly reporting format that includes benchmarks for completing both pending REP items and other items mentioned as part of the NEXT STEPS FOR GDOE listed above.
- ❖ GRMSD will incorporate any pending REP items into the GDOE's FY2024 departmentwide specific conditions issued by the Department as well as the criteria and timing for ultimately having its high-risk designation removed.