



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

July 1, 2022

Honorable Jon J.P. Fernandez  
Superintendent of Education  
Guam Department of Education  
500 Mariner Avenue  
Barrigada, Guam 96913

Dear Superintendent Fernandez:

We have approved Guam's application for Federal Fiscal Year (FFY) 2022 funds under Part B of the Individuals with Disabilities Education Act (IDEA Part B). Our approval is based on our review of the IDEA Part B application submitted by the Guam Department of Education (GDOE) to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 20, 2022, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A. Our approval is also based on Guam's certification in Section II.D of its FFY 2022 application (Enclosure B) that Guam's provisions meet the requirements of IDEA Part B as found in Public Law 108-446, and that Guam will operate its Part B program in accordance with all of the required assurances and certifications, consistent with 34 C.F.R. § 76.104. The effective date of this grant award is July 1, 2022.

Please note that OSEP Memorandum 22-07, dated February 3, 2022, explained the impact of recent amendments to the Copyright Act, 17 U.S.C. § 121, on certain terms relevant to Assurance 23a or 23b related to accessible instructional materials as reflected in Guam's FFY 2022 application for funds under IDEA Part B. As a result, the term "blind and other persons with print disabilities" has been removed from the Copyright Act and replaced with "eligible person," and the term "specialized format" has been removed and replaced with the term "accessible format." Although at this time Congress has not made conforming amendments to section 612(a)(23) of IDEA, the Department construes Assurances 23a and 23b as incorporating the terms "eligible person" and "accessible format."

Guam's FFY 2022 IDEA B grant award is being released subject to Specific Conditions that are identified in the Department's June 29, 2022 letter to GDOE, which is included as Enclosure D to this grant letter and hereby expressly incorporated into the terms of Guam's FFY 2022 IDEA Part B grant. These Specific Conditions and GDOE's designation as a high-risk grantee are being imposed pursuant to the Department's authority in 2 C.F.R. §§ 200.208 and 3474.10 on all Department grants awarded to GDOE (including the enclosed IDEA Part B grant award) to ensure GDOE's management of, and accountability for, Department grant funds. By accepting this grant award, Guam expressly agrees to comply with the Specific Conditions identified in Enclosure D throughout the period that Guam uses its FFY 2022 IDEA Part B funds.

Please note that as part of its application for FFY 2022 IDEA Part B funds, Guam has provided a certification, pursuant to 34 C.F.R. § 76.104, that its application meets the requirements of IDEA Part B and that Guam will operate its Part B program in accordance with all of the required

assurances and certifications. Any changes made by Guam, after OSEP approval, to information that is a part of Guam's Part B application, must meet the public participation requirements in 34 C.F.R. § 300.165.

Enclosed is Guam's FFY 2022 grant award for funds currently available under the Consolidated Appropriations Act, 2022 (Public Law 117-103) for the IDEA Part B Section 611 (Grants to States) program. These funds are available for obligation by States and entities from July 1, 2022, through September 30, 2024, in accordance with 34 C.F.R. § 76.709.

The amount shown in Guam's award for the Section 611 program is only part of the total funds that will be awarded to it for FFY 2022. Of the \$13,343,704,000 appropriated for Section 611 in FFY 2022, \$4,060,321,000 is available for awards on July 1, 2022, and \$9,283,383,000 will be available for awards on October 1, 2022.

Under the Section 611 formula, the Secretary reserves not more than one percent of the amount appropriated for FFY 2022 to provide assistance to the outlying areas in accordance with their respective populations of individuals aged three through 21 and to provide each freely associated State a grant in the amount that such freely associated State received in fiscal year 2003 under Part B of the IDEA.

Enclosure C provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure C shows funding levels for distribution of Section 611 funds and the parameters for within-State allocations.

Under IDEA Section 605, the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance) in 2 C.F.R. Part 200, and 34 C.F.R. § 300.718, States must request prior approval from OSEP for certain State-level activities or expenses. On October 29, 2019, the Office of Special Education and Rehabilitative Services released a Frequently Asked Questions document (2019 FAQs) on prior approval.<sup>1</sup> Guam did not submit a prior approval request with its grant application. If Guam plans to use its FFY 2022 IDEA Part B grant funds for such costs, and those costs fall outside of the scope of the 2019 FAQs, it must submit a request for prior approval to which OSEP will respond separate from the grant letter.

In Section V.A of its IDEA Part B application, pursuant to the authority in IDEA Section 618(a)(3), Guam was required to submit data on the total amount of Guam financial support made available for special education and related services for children with disabilities in Guam's State fiscal year (SFY) 2020 and SFY 2021. If OSEP receives information through audits, fiscal monitoring or other means that raises questions about the data Guam has provided in Section V.A, OSEP will follow up with Guam.

---

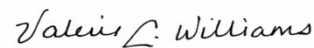
<sup>1</sup> Prior approval must be obtained under IDEA for the following direct costs: (1) equipment (defined generally as \$5,000 or more per item of equipment) (2 C.F.R. § 200.1 and 34 C.F.R. § 300.718); (2) participant support costs (such as training or travel costs for non-employees) (2 C.F.R. § 200.1); and (3) construction or alteration of facilities (34 C.F.R. § 300.718). Under the 2019 FAQs, OSERS granted prior approval for participant support costs under IDEA that: are associated with State Advisory Panels; are incurred during the provision of services under IDEA; do not exceed \$5000 per individual participant per training/conference; and are incurred by local educational agencies under IDEA Part B. In addition, the 2019 FAQs provide prior approval for equipment that is identified on or directly related to the implementation of an individualized education program for youth and children with disabilities.

Section 604 of the IDEA provides that “[a] State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this [Act].” Section 606 provides that each recipient of assistance under the IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant, Guam is expressly agreeing as a condition of IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

The enclosed grant award of FFY 2022 funds is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries may be necessary to allow us to appropriately carry out our administrative responsibilities related to IDEA Part B.

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,

A handwritten signature in cursive script that reads "Valerie C. Williams".

Valerie C. Williams  
Director  
Office of Special Education Programs

Enclosures

- Enclosure A (Sections II.A-C. of the State’s application)
- Enclosure B (Section II.D. of the State’s application)
- Enclosure C (Description of how Section 611 allotments are made)
- Enclosure D (Department-wide Specific Conditions)

cc: State Director of Special Education

State Name: Guam

## Enclosure A

### Section II

#### A. Assurances Related to Policies and Procedures

The State makes the following assurances that it has policies and procedures in place as required by Part B of the Individuals with Disabilities Education Act. (20 U.S.C. 1411-1419; 34 CFR §§300.100-300.174)

Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)  Check and enter date(s) as applicable	Assurances Related to Policies and Procedures
X		1. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled, in accordance with 20 U.S.C. 1412(a)(1); 34 CFR §§300.101-300.108.
X		2. The State has established a goal of providing a full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal. (20 U.S.C. 1412(a)(2); 34 CFR §§300.109-300.110)
X		3. All children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services in accordance with 20 U.S.C. 1412(a)(3); 34 CFR §300.111.
X		4. An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with 34 CFR §§300.320 through 300.324, except as provided in §§300.300(b)(3) and 300.300(b)(4). (20 U.S.C. 1412(a)(4); 34 CFR §300.112)
X		5. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular

		classes with the use of supplementary aids and services cannot be achieved satisfactorily in accordance with 20 U.S.C. 1412(a)(5)(A)-(B); 34 CFR §§300.114-300.120.
X		6. Children with disabilities and their parents are afforded the procedural safeguards required by 34 CFR §§300.500 through 300.536 and in accordance with 20 U.S.C. 1412(a)(6); 34 CFR §300.121.
X		7. Children with disabilities are evaluated in accordance with 34 CFR §§300.300 through 300.311. (20 U.S.C. 1412(a)(7); 34 CFR §300.122)
X		8. Agencies in the State comply with 34 CFR §§300.610 through 300.626 (relating to the confidentiality of records and information). (20 U.S.C. 1412(a)(8); 34 CFR §300.123)
X		9. Children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with 34 CFR §300.323(b) and section 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10). (20 U.S.C. 1412(a)(9); 34 CFR §300.124)
X		10. Agencies in the State, and the SEA if applicable, comply with the requirements of 34 CFR §§300.130 through 300.148 (relating to responsibilities for children in private schools), including that to the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the requirements found in 34 CFR §§300.130 through 300.148 unless the Secretary has arranged for services to those children under subsection (f) [By pass]. (20 U.S.C. 1412(a)(10); 34 CFR §§300.129-300.148)
X		11. The State educational agency is responsible for ensuring that the requirements of Part B are met including the requirements of 34 CFR §§300.113, 300.149, 300.150 through 300.153, and 300.175 and 300.176 and that the State monitors and enforces the requirements of Part B in accordance with 34 CFR §§300.600-300.602 and 300.606-300.608. (20 U.S.C. 1412(a)(11); 34 CFR §300.149)
X		12. The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (b) of 34 CFR §300.154 and the State educational agency, in order to ensure that all services described in paragraph (b)(1)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under §300.154(a)(3). Such agreement or

		mechanism shall meet the requirements found in 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154.
X		13. The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1412(a)(13); 34 CFR §300.155)
X		14. The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities as noted in 20 U.S.C. 1412(a)(14)(A)-(E); 34 CFR §300.156.
X		15. The State has established goals for the performance of children with disabilities in the State that meet the requirements found in 20 U.S.C. 1412(a)(15)(A)-(C); 34 CFR §300.157.
X		16. All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs as noted in 20 U.S.C. 1412(a)(16)(A)-(E); 34 CFR §300.160.
X		17. Funds paid to a State under this part will be expended in accordance with all the provisions of Part B including 20 U.S.C. 1412(a)(17)(A)-(C); 34 CFR §300.162.
X		18. The State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year, unless a waiver is granted, in accordance with 20 U.S.C. 1412(a)(18)(A)-(D); 34 CFR §§300.163 through 300.164.
X		19. Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. (20 U.S.C. 1412(a)(19); 34 CFR §300.165)
X		20. In complying with 34 CFR §§300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation. (20 U.S.C. 1412(a)(20); 34 CFR §300.166)
X		21. The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State as found in 20 U.S.C. 1412(a)(21)(A)-(D); 34 CFR §§300.167-300.169.
X		22. The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant

		discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities in accordance with 20 U.S.C. 1412(a)(22)(A)-(B); 34 CFR §300.170.
X		23a. The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register in accordance with 20 U.S.C. 1412(a)(23)(A) and (D); 34 CFR §300.172.
		23b. <i>(Note: Check either "23b.1" or "23b.2" whichever applies.</i>
X		23b.1 The State educational agency coordinates with the National Instructional Materials Access Center and not later than 12/03/06 the SEA as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials enters into a written contract with the publisher of the print instructional materials to: <ul style="list-style-type: none"> <li>• require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or</li> <li>• purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. (20 U.S.C. 1412(a)(23)(C); 34 CFR §300.172)</li> </ul>
		23b.2 The State educational agency has chosen not to coordinate with the National Instructional Materials Access Center but assures that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (20 U.S.C. 1412(a)(23)(B); 34 CFR §300.172)
X		24. The State has in effect, consistent with the purposes of the IDEA and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 CFR §300.8. (20 U.S.C 1412(a)(24); 34 CFR §300.173)
X		25. The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school, receiving an evaluation under 34 CFR §§300.300 through 300.311, or receiving services under the IDEA as described in 20 U.S.C. 1412(a)(25)(A)-(B); 34 CFR §300.174.

## B. Other Assurances

The State also makes the following assurances:

Yes	Other Assurances
X	1. The State shall distribute any funds the State does not reserve under 20 U.S.C. 1411(e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part as provided for in 20 U.S.C. 1411(f)(1)-(3); 34 CFR §300.705.
X	2. The State shall provide data to the Secretary on any information that may be required by the Secretary. (20 U.S.C. 1418(a)(3); 34 CFR §§300.640-300.645.)
X	3. The State, local educational agencies, and educational service agencies shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. (34 CFR §76.702)
X	4. As applicable, the assurance in OMB Standard Form 424B (Assurances for Non-Construction Programs), relating to legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood insurance; environmental standards; wild and scenic river systems; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and general agreement to comply with all Federal laws, executive orders and regulations.

## C. Certifications

The State is providing the following certifications:

Yes	Certifications
X	1. The State certifies that ED Form 80-0013, <i>Certification Regarding Lobbying</i> , is on file with the Secretary of Education.  With respect to the <i>Certification Regarding Lobbying</i> , the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers.
X	2. The State certifies that certification in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §76.104 relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State.
X	3. The State certifies that the arrangements to establish responsibility for services pursuant to 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154 (or 20 U.S.C. 1412(a)(12)(A); 34 CFR §300.154(a) are current. This certification must be received prior to the expenditure of any funds reserved by the State under 20 U.S.C. 1411(e)(1); 34 CFR §300.171.



**D. Statement**

I certify that the State of **GUAM** can make the assurances checked as 'yes' in Section II.A and II.B and the certifications required in Section II.C of this application. These provisions meet the requirements of the Part B of the Individuals with Disabilities Education Act as found in PL 108-446. The State will operate its Part B program in accordance with all of the required assurances and certifications.


If any assurances have been checked 'no', I certify that the State will operate throughout the period of this grant award consistent with the requirements of the IDEA, as found in PL 108-446 and any applicable regulations, and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2023. (34 CFR § 76.104)

I, the undersigned authorized official of the

**GUAM, GUAM DEPARTMENT OF EDUCATION,**

*(Name of State and official name of State agency)*

am designated by the Governor of this State to submit this application for FFY 2022 funds under Part B of the Individuals with Disabilities Education Act (IDEA).

Printed/Typed Name of Authorized Representative of the State:	
TB <b>JON J. P. FERNANDEZ</b>	
Title of Authorized Representative of the State:	
SUPERINTENDENT OF EDUCATION	
Signature:	
	
Date:	5/18/22

**Enclosure C**  
**IDEA Grants to States Program**  
**(Part B, Section 611)**

**Explanation of the Federal Fiscal Year (FFY) 2022 Allocation Table**

**Total Grant Award (Column B)**

Column B shows your total grant award for the Grants to States program for FFY 2022 under the Consolidated Appropriations Act, 2022 (Public Law 117-103).

State total grants are calculated in accordance with several factors. First, each State is allocated an amount equal to the amount that it received for fiscal year 1999. If the total program appropriation increases over the prior year, 85 percent of the remaining funds are allocated based on the relative population of children aged 3 through 21 who are in the age range for which the State ensures the availability of a free appropriate public education (FAPE) to children with disabilities. Fifteen percent of the remaining funds are allocated based on the relative population of children aged 3 through 21 living in poverty who are in the age range for which the State ensures the availability of FAPE to children with disabilities. The statute also includes several maximum and minimum allocation requirements when the amount available for distribution to States increases.

If the amount available for allocation to States remains the same from one year to the next, States receive the same level of funding as in the prior year. If the amount available for allocation to States decreases from the prior year, any amount available for allocation to States above the fiscal year 1999 level is allocated based on the relative increases in funding that the States received between fiscal year 1999 and the prior year. If there is a decrease below the amount allocated for 1999, each State's allocation is ratably reduced from the fiscal year 1999 level.

**Section 611 Base Allocation to LEAs (Column C)**

Column C is the portion of the local educational agency (LEA) flow-through amount that must be distributed to LEAs based on the amounts that the LEAs would have received from FFY 1999 funds had the State educational agency (SEA) flowed through 75 percent of the State award to LEAs. Note that this amount is less than the minimum amount that States were required to provide to LEAs from FFY 1999 funds. The Part B regulations at 34 CFR §300.705(b)(2) clarify how adjustments to the base payment amounts for LEAs are made.

**Maximum Set-Aside for Administration (Column D)**

Column D includes the maximum State set-aside amount for administration. A State may reserve for State administration up to the greater of the maximum amount the State could reserve for State administration from fiscal year 2004 funds, or \$800,000, increased by inflation as reflected by the Consumer Price Index for All Urban Consumers (CPIU). The maximum State set-aside amount available for administration for FFY 2022 is a 6.0 percent increase over the maximum amount that was available for FFY 2021. Each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under this program or \$35,000, whichever is greater.

**Maximum Set-Aside Available for Other State-Level Activities (Columns E - H)**

The maximum level of funding that may be set aside from a State's total allocation for State-level activities, other than administration, is contingent upon the amount that the State actually sets aside for administration and whether the State opts to establish a LEA high-risk pool under IDEA, section 611(e)(3). For FFY 2022:

- (1) If the actual amount a State will set aside for State administration is over \$850,000 and the State will use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 10.0 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.
- (2) If the actual amount a State will set aside for State administration is over \$850,000 and the State will not use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 9.0 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.
- (3) If the actual amount a State will set aside for State administration is \$850,000 or less and the State will use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 10.5 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.
- (4) If the actual amount a State will set aside for State administration is \$850,000 or less and the State will not use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 9.5 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.

SEAs are required to use some portion of these State set-aside funds on monitoring, enforcement, and complaint investigation and to establish and implement the mediation process required by section 615(e), including providing for the costs of mediators and support personnel. In addition, States setting aside funds for a high-risk pool, as provided for under section 611(e)(3), must reserve at least 10 percent of the amount the State reserved for State-level activities for the high-risk pool.

SEAs also may use State set-aside funds: (1) for support and direct services, including technical assistance, personnel preparation, and professional development and training; (2) to support paperwork reduction activities, including expanding the use of technology in the individualized education program process; (3) to assist LEAs in providing positive behavioral interventions and supports and mental health services to children with disabilities; (4) to improve the use of technology in the classroom by children with disabilities to enhance learning; (5) to support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities; (6) for development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities; (7) to assist LEAs in meeting personnel shortages; (8) to support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities; (9) for alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools; (10) to support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 1201 of the Elementary and Secondary Education Act of 1965 (ESEA); and (11) to provide technical assistance to schools and LEAs, and direct services, including direct student services described in section 1003A(c)(3) of the ESEA to children with disabilities, in schools or LEAs implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of

the ESEA on the basis of consistent underperformance of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement based on the challenging academic standards described in section 1111(b)(1) of the ESEA.

### **Section 611 Population/Poverty**

The minimum amount that a State must flow through to LEAs based on population/poverty equals the total award (Column B) minus the LEA base allocation (Column C), the maximum amount available for administration (Column D), and the maximum amount available for other State-level activities (Column E, F, G, or H). Of this amount, 85 percent must be distributed on a pro-rata basis to LEAs according to public and private elementary and secondary school enrollment, and 15 percent on a pro-rata basis to LEAs according to the number of children in LEAs living in poverty, as determined by the State.

## ENCLOSURE D



### UNITED STATES DEPARTMENT OF EDUCATION

#### OFFICE OF FINANCE AND OPERATIONS

#### OFFICE OF ACQUISITION, GRANTS, AND RISK MANGEMENT

June 29, 2022

Superintendent Jon Fernandez  
Guam Department of Education  
500 Mariner Avenue  
Barrigada, Guam 96913

Dear Superintendent Fernandez:

Enclosed are Federal Fiscal Year (FFY) 2022 specific conditions for U.S. Department of Education (Department) grants awarded to the Guam Department of Education (GDOE). These specific conditions apply to all grants awarded by the Department to GDOE on or after the date of these specific conditions, including any Coronavirus Aid, Relief, and Economic Security (CARES) Act or Coronavirus Response and Relief Supplemental Appropriations (CRRSA) funds that the Guam Governor awards to GDOE. Additionally, these specific conditions apply to all grant funds previously awarded by the Department to GDOE that are still available for obligation or liquidation on the date of these specific conditions, including any CARES Act or CRRSA funds that the Guam Governor awarded to GDOE.

The Department acknowledges and commends the significant progress made by you and your staff over the past 10 years under your leadership to strengthen internal controls and establish an effective financial management system. This progress was evident during the Department's recent onsite visit on May 23 – 27, 2022. As a result of the noted progress, the Department is removing 13 of the 21 responsibilities and requirements previously included in Attachment A of these conditions, as well as 18 of the 22 responsibilities and requirements previously included in Attachment B. A new requirement has been added to Attachment B to direct the third-party fiduciary agent (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.

Based on the Department's ongoing assessment of the information gathered during the May onsite visit and GDOE's noted progress, the Department is not making a final determination at this time as to whether the third-party fiduciary specific condition should be removed. The Department will continue to assess progress and work with GDOE over the summer to make a final determination. GDOE is encouraged to continue focusing on working with the TPFA to adopt processes that will eventually lead to reassuming all fiscal management responsibilities currently performed by the TPFA. The Department understands that GDOE will also be working

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-4500  
[www.ed.gov](http://www.ed.gov)

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

with its High-Risk Consultant to develop and submit a transition restructuring plan to the Department for approval.

In the interim, the attached FFY 2022 specific conditions describe the ongoing responsibility of GDOE to work with the TPFA, as well as the role and responsibilities of the TPFA in administering Department grant funds. The FFY 2022 specific conditions also require GDOE to finalize the implementation of the pending items within its Reconsideration Evaluation Plan (REP). The Office of Acquisition, Grants, and Risk Management (OAGRM), Grants Risk Management Services Division (GRMSD) is committed to continue engaging with GDOE leadership to verify the status of GDOE's progress under the REP to eventually transition responsibilities currently performed by the TPFA back to GDOE oversight.

The Department also continues its commitment to provide assistance to work with the new GDOE leadership and staff to complete the reconsideration evaluation process. If you have any questions or require further assistance, please contact Christine Jackson, the primary contact for the Grants Risk Management Services Division of the Office of Acquisition, Grants, and Risk Management within the Office of Finance and Operations, at (202) 615-3663 or via e-mail at [christine.jackson@ed.gov](mailto:christine.jackson@ed.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Phillip Juengst", with a stylized flourish at the end.

Phillip Juengst  
Deputy Assistant Secretary  
Office of Acquisition, Grants, and Risk Management

Enclosure

cc: Governor Lou Leon Guerrero  
Mark Mendiola, Chairman, Guam Education Board  
Mary Okada, Vice Chair, Guam Education Board  
Congressman Michael San Nicolas

## **Guam Department of Education**

### **Federal Fiscal Year 2022 Specific Conditions**

PREAMBLE: These specific conditions are imposed on all program grants issued by the U.S. Department of Education (Department) to the Guam Department of Education (GDOE) on or after the date of these specific conditions, including any Coronavirus Aid, Relief, and Economic Security Act (CARES Act) or Coronavirus Response and Relief Supplemental Appropriations (CRRSA) funds that the Guam Governor awards to GDOE. Additionally, as described herein, these specific conditions apply to grant funds previously awarded by the Department to GDOE that are still available for obligation or liquidation on the date of these specific conditions, including any CARES Act or CRRSA funds that the Guam Governor awarded to GDOE. These specific conditions are applied to these program grant funds in accordance with regulations governing “high-risk” grantees and specific conditions in 2 CFR §§ 200.207 and 3474.10 in the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Pending GDOE’s completion and implementation of measures specified in the Reconsideration Evaluation Plan (REP) discussed below to address deficiencies in GDOE’s financial management and administration of Department funds, these specific conditions are imposed on GDOE’s Department grants to ensure that GDOE implements Department grant awards in accordance with applicable legal requirements and with appropriate fiscal accountability measures, management practices and controls.

#### **I. BACKGROUND**

On May 29, 2018, GDOE submitted to the Department a formal request for reconsideration of the specific conditions applicable to Department grant funds. For the past four years, the Department has worked in partnership with GDOE to: (1) develop a process for reconsideration, resulting in a Reconsideration Evaluation Plan (REP); and (2) complete the implementation of the REP as a prerequisite for the Department making a determination to modify the specific conditions. The REP is designed to: 1) provide clear guidance to GDOE on actions that it must take and complete during the reconsideration process; 2) inform the Department as it determines the extent to which specific conditions may be removed and the extent to which financial management responsibilities may be returned incrementally (or otherwise) to GDOE; and 3) inform the Department as it determines whether GDOE has taken all necessary actions to render it capable of performing the financial management responsibilities currently performed by a third-party fiduciary agent (TPFA), ultimately resulting in the removal of the requirement that GDOE have a TPFA in place to assist in managing its Department funds. The REP replaced the Comprehensive Corrective Action Plan as the document against which GDOE’s progress would be measured during the reconsideration process.

At the request of the GDOE leadership, the Office of Acquisition, Grants, and Risk Management, Grants Risk Management Services Division led a team of Department staff, including representatives from the Consolidated Grant program within the Office of Elementary and Secondary Education, Rural, Insular, and Native Achievement Programs, Insular Areas Team;

Monitoring and State Improvement Planning Division within the Office of Special Education Programs; Regional Inspector General for Audit, New York/ Dallas Region within the Office of Inspector General; and the Office of the Secretary to conduct an onsite REP validation visit, May 23-27, 2022, for the purpose of verifying GDOE's progress under the REP. The intended outcome of the visit was to determine the readiness to transition responsibilities currently performed by the TPFA back to GDOE. Progress towards addressing the items identified in the REP was evident during the Department's visit.

As a result of the noted progress, the Department is removing 13 of the 21 responsibilities and requirements previously included in Attachment A of these conditions, as well as 18 of the 22 responsibilities and requirements previously included in Attachment B. Pending the outcome of the Department's final onsite validation report and recommendations, further modifications of these conditions may occur.

As of the date of the Department's onsite REP validation visit, 91 of the 138 REP requirements, (66%) were deemed complete, representing documentation submissions in each of the following REP sections: Employee Time Tracking (64%); Financial Management Improvement System (65%); Internal Controls (71%); Procurement (69%); and Property Management (65%). In the interim, the GRMSD staff will continue to work with the GDOE Internal Audit Office to review and validate pending REP items.

## II. SPECIFIC CONDITIONS

GDOE currently has an active contract with a TPFA, Alvarez & Marsal (A&M), that expires October 31, 2022. The Department will not authorize the obligation, liquidation or expenditure of Department funds unless a TPFA is in place for the full period of these specific conditions, or until the Department notifies GDOE in writing that the services of a TPFA are no longer required. GDOE understands and agrees that should a TPFA still be required after October 31, 2022, it must either extend its contract with A&M or procure the services of a new TPFA, acceptable to the Department. In the interim, GDOE must continue to work toward completion of the REP.

The responsibilities and requirements of GDOE in working with the Agent are set forth in Attachment A to these specific conditions. The responsibilities and requirements of the Agent in carrying out the financial management duties for GDOE's Department grants are set forth in Attachment B to these specific conditions.

## III. ADDITIONAL PROVISIONS

### A. Failure to Comply with Conditions

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.



B. Submission of Reports

All reports or other submissions that GDOE or the Agent are required to submit to the Department under these specific conditions must be submitted electronically to:

Christine Jackson  
Senior Risk Consultant  
Grants Risk Management Services Division  
Office of Acquisition, Grants, and Risk Management  
Office of Finance and Operations  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20212  
ATTN: Grants Risk Management Services Division  
christine.jackson@ed.gov

C. Reconsideration and Modifications

At any time, GDOE may request reconsideration of the above specific conditions by contacting the Department staff named above in paragraph III.B of these conditions and stating in writing the reasons why GDOE believes any particular condition should be amended or removed. The Department may impose additional specific conditions or modify these specific conditions, as appropriate. The Department will remove the specific conditions in total at such time as GDOE fully demonstrates, to the Department's satisfaction, the ability to manage Department funds, and property acquired with Department funds, in a manner that complies with applicable Federal requirements concerning accountability and grants management.

Dated: June 29, 2022

Attachment A to the GDOE FFY 2022 Specific Conditions  
Responsibilities and Requirements of GDOE

The responsibilities and requirements of GDOE in working with the Agent under these GDOE FFY 2022 specific conditions are as follows:

1. GDOE must notify the Department when any dispute arises and remains unresolved between the Agent and GDOE concerning the implementation or continuation of the contract with the Agent, or the implementation of activities supported by Department grants, including the financial management of grant funds. GDOE agrees that the Department may assist in the resolution of any such unresolved dispute and agrees to cooperate with any requests from the Department for additional information related to the dispute and to participate in conference calls with the Agent and the Department. This does not preclude GDOE and the Agent from including formal dispute resolution mechanisms in their contract.
2. GDOE must expend Federal and matching funds only for costs that are allowable under the respective grant programs, in accordance with the regulations and cost principles in 2 CFR Part 200, Subpart E. Additionally, for purposes of the Consolidated Grant, GDOE must expend Federal and matching funds only for allowable costs under, and included in, each Department-approved Consolidated Grant plan applicable to the fiscal year in which the costs were obligated. GDOE acknowledges that the Agent has the responsibility to ensure that Department funds are used only for allowable costs, including costs that are necessary, reasonable, and allocable to the respective grants as required by 2 CFR Part 200, Subpart E, and that are procured in accordance with applicable procurement requirements in 2 CFR §§ 200.318-200.327. Where there is a question as to whether a cost is allowable, the Agent must raise this question with GDOE and, if the Agent deems it necessary, may also request assistance from the Department in determining the allowability of any expenditure.
3. GDOE must coordinate the timing of drawdowns and disbursements with the Agent to ensure that payments to staff, vendors and providers are prompt and timely. To the extent feasible, GDOE must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account on the same day that funds are drawn from the account to liquidate obligations under the grants. GDOE, as appropriate and at the Agent's direction, must draw down sufficient funds under a grant to cover each approved request for payment.
4. GDOE must charge its grants only for costs resulting from obligations that were properly made during the period of availability for the funds, including any carryover period. To ensure against the lapsing of Department funds, GDOE must provide the Agent with the amount and nature of all obligations in a timely manner to ensure that obligations are liquidated no later than 120 days after the end of the funding period, or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.344(b).

5. GDOE must establish and maintain an effective process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including, but not limited to, maintaining accurate and up-to-date employee staffing lists and notices of personnel actions, distributing time among different funding sources for split-time employees, making timely and accurate adjustments to time and effort information entered into the payroll system, and properly allocating salary costs among Department grants based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. GDOE must carry out these responsibilities consistent with Federal requirements in 2 CFR Part 200, Subpart E, and more specifically, 2 CFR §§ 200.430 and 200.431.
6. GDOE must ensure that within 24 hours of receipt of a vendor's invoice from the Agent, GDOE staff must (i) accept or reject the goods or services, and, if accepted, (ii) draw down funds for the vendor payment for deposit into the separate bank account maintained by the Agent.
7. GDOE must work with the Agent to ensure that all tangible personal property procured under Department grants is managed in accordance with the requirements of 2 CFR §§ 200.313(a) and (c)-(e) to ensure that such property is properly inventoried, maintained, and stored to prevent loss, damage, or theft of such property.
8. GDOE may include any other terms in the contract with the Agent, consistent with those above, as are necessary to ensure timely liquidation of all Department funds; timely payment to staff, providers and vendors; and general financial management consistent with applicable Federal regulations and Department grant awards.

Attachment B to the GDOE FFY 2022 Specific Conditions  
Responsibilities and Requirements of the Third-Party Fiduciary Agent

The responsibilities and requirements of the Agent under these GDOE FFY 2022 specific conditions are as follows:

1. The Agent must expend funds only for costs that are allowable under the respective grant programs, in accordance with 2 CFR Part 200, Subpart E. Additionally, for purposes of the Consolidated Grant, the Agent must expend funds only for allowable costs under, and included in, each Department-approved Consolidated Grant plan applicable to the fiscal year in which the costs were obligated. If the Agent questions whether an expenditure is allowable, the Agent must raise this question with GDOE. If the Agent deems it necessary, the Agent may also request assistance from the Department in determining the allowability of any expenditure.
2. The Agent may seek approval from the Department to charge allowable pre-award costs incurred by GDOE against grant awards to which these specific conditions apply. The Agent must submit any request for pre-award costs to the Department in writing and may not reimburse any pre-award costs unless it receives written approval from the Department 120 days after the end of the funding period, or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.344(b).
3. The Agent must establish and maintain a process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including distribution of time among different funding sources for split-time employees, timely and accurate adjustments to time and effort information in the payroll system, and proper allocation of salary costs among Department grants based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. To carry out the responsibilities under this paragraph, the Agent must conduct an assessment of GDOE's internal controls over payroll operations to ensure that the payroll process is functioning as intended and calculations of gross earnings from all work performed during the pay period are correct; an assessment to determine that there are proper controls and procedures for identifying employees who are paid in whole or in part from Department grant awards; an assessment to determine whether employees are being compensated at their approved salaries/pay rates and from appropriate funding sources; and other tests to ensure that payroll earnings, deductions, and withholdings are made in accordance with the law and correspond to information contained in the employee master file. The Agent must carry out the responsibilities under this paragraph consistent with Federal requirements in 2 CFR Part 200, Subpart E.
4. The Agent must pay vendors for the delivered goods or services and must, to the extent possible, disburse funds to the vendors on the same day that funds are deposited into the separate bank account maintained by the Agent as required by 2

CFR Part 200, Subpart E, and that are procured in accordance with applicable procurement requirements in 2 CFR §200.327. The Agent must make payments by electronic funds transfer (EFT) or by paper draft if EFT is not available or possible for a particular vendor.

5. The Agent will work with GDOE to return all Purchase Order (PO) functions performed within GDOE's procurement process back to GDOE control within the GDOE MUNIS Procurement Module. This includes the generation and workflow approval of all POs and PO modifications, as well as the printing, signing and scanning of POs. The TPFA will continue to have the role as a reviewer within the PO workflow approval process in the GDOE MUNIS and will maintain authority to return POs that do not meet requirements for approval.