UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

June 23, 2009

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

Dear Superintendent Bretania-Shafer:

The purpose of this correspondence is to provide the enclosed special conditions that will apply to all grants awarded by the U.S. Department of Education (Department) to the Guam Public School System (GPSS) on or after the date of these special conditions, including grants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA). These special conditions will also be applicable to grant funds previously awarded by the Department to GPSS that are still available for obligation or liquidation as of the date of these special conditions.

The enclosed Federal fiscal year (FFY) 2009 special conditions are in continued response to the FY 2003 designation of GPSS as a "high-risk" grantee under 34 C.F.R. § 80.12 due to significant problems in the areas identified through Single Audit Act noncompliance and fiscal accountability, which continue to affect the organization. In addition to these problems, which fall into a number of areas, including, but not limited to, implementation of adequate internal controls, procurement, property management, and cash management, there continue to be specific challenges associated with GPSS management, such as significant changes in the Superintendent's Management Team over the past six months, that continue to raise concern regarding management stability – a critical factor in GPSS's ability to properly manage Department grant funds.

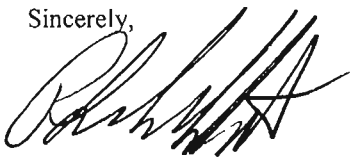
Under the special conditions, GPSS must continue to implement its Comprehensive Corrective Action Plan (CCAP), which became final in October 2007, followed by approved revisions in December 2008. GPSS must report biannually to the Department on its progress in implementing measures under the CCAP; these reports will be due January 1, 2010 (covering the period of June 1 through December 31, 2009) and May 31, 2010 (covering the period of January 1 through April 30, 2010). In addition, GPSS must provide the Department with a new written assurance regarding management stability, particularly in light of the recent changes in the Superintendent's Management Team, as the Department has previously recognized the establishment of this team as integral to GPSS's management of Department grant awards and to the implementation of the CCAP. Finally, there are a number of other matters that GPSS must address under the special conditions, including completing the implementation of the financial management contract with MGA Consulting, fully implementing its Management Internal Controls program, and reviewing and implementing, as appropriate, the recommendations of the independent Management and Curriculum Audit conducted by Evergreen Solutions, LLC.

We acknowledge that GPSS has already taken a number of steps toward implementing the various measures included in the CCAP and has also undertaken other actions that are necessary to improve its fiscal accountability with respect to Department grant funds. While there has not yet been full progress, we note GPSS's efforts thus far and encourage continued, steady work toward meeting the requirements of the special conditions and improving its administration and management of Department grant funds.

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 look forward to continuing the partnership established with you and the GPSS staff.

Sincerely,



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

Enclosure

cc: Guam Governor
Speaker, Twenty-Ninth Guam Legislature
Guam Attorney General
Congressional Representative
Chairman, Guam Education Policy Board

Guam Public School System
Federal Fiscal Year (FFY) 2009 Special Conditions

PREAMBLE: These special conditions are imposed on all program grants issued by the U.S. Department of Education (Department) to the Guam Public School System (GPSS) on or after the date of these special conditions, including grants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA). 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 the Education Department General Administrative Regulations (EDGAR), 34 CFR § 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 34 CFR § 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 unauditable.

GPSS has 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 most recent single audit for FY 2008 was unqualified for financial statements, however, continues include material weaknesses, in addition to concluding as qualified for major program compliance. These 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 FFY 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 still needs to make significant progress in implementing the CCAP measures, as evidenced by the CCAP reports that it submitted on July 31, 2008, January 31, 2009, and May 30, 2009. The reports continue to reflect delays in the progress necessary to ensure that GPSS will achieve compliance with requirements for the administration and

management of Department grant awards. In particular, GPSS had not made 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 also expressed numerous concerns about the need for stability in GPSS's governance and management and views this lack of stability 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) provided important legal guidance for maintaining that governance and management stability, and helping to ensure that the special conditions set forth in this document are met. In that regard, the Department recognizes the Management Team that the GPSS Superintendent established to assist with the administration of Department grant awards as integral to GPSS's efforts in implementing the CCAP.

Finally, the Department has reviewed both the January 31, 2009 and May 30, 2009 GPSS biannual reports on its CCAP and has concluded that GPSS must:

1. Continue to ensure that governance and 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 and permanent 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 and FY 2008 single audits related to reconciling the general ledger and maintaining its accounting records. This includes completing the implementation of the financial management contract with MGA Consulting and fully implementing its MIC program.

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 the oversight of programs implemented with Department grant funds and for ensuring compliance with applicable Federal grant management requirements.

5. Work in collaboration with various Guam government stakeholders, such as the Governor, Guam Legislature, and Office of the Public Auditor to review

and implement as appropriate the recommendations of the independent Management and Curriculum Audit conducted by Evergreen Solutions, LLC. Since this contract was intended to evaluate GPSS's current operations and to be a mechanism to further enhance efforts to increase efficiencies throughout its organization, it should provide pertinent information for GPSS to consider as part of its short- and 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 and that, while there has not been sufficient progress, GPSS has taken some important actions toward implementing the CCAP.

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, and the Department approved revisions to the CCAP in December 2008. 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.

2. GPSS must continue to provide biannual reports to the Department on its progress in implementing measures required under the CCAP, describing the current status of GPSS's implementation of the various measures, including a description of activities and progress for each task during the reporting period, documentation of measures of performance and results, and other data or documentation as specified within the action steps for each task, and, if necessary, any changes in the targeted completion dates included in the CCAP. GPSS should make every effort to avoid the need to change targeted completion dates. The following are the dates for submission of the CCAP reports:

   - January 1, 2010 (covering the period of June 1 through December 31, 2009)
   - May 31, 2010 (covering the period of January 1, 2010 through April 30, 2010)

B. Assurances

GPSS must provide the Department with a new written assurance that necessary improvements in internal controls will be reinforced by governance and management stability within its organization, including within the GPSS Superintendent's

Management Team, and in accordance with the Attorney General's legal opinion dated September 24, 2008. Governance and management stability are 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 CCAP momentum and continued progress in implementing the Federal education programs are maintained.

C. 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.

D. 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.

E. Program-Specific Conditions

Special conditions have been imposed on FY 2009 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.

F. ARRA-Specific Conditions

ARRA-specific special conditions will be contained in attachments to the final ARRA grant notification documents provided by the Department to GPSS and will be in addition to the special conditions contained in this document.

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, or C 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.E, F, or G of these special conditions concerning program-specific and ARRA 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 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: June 23, 2009