

I MINA'TRENTAI UNU NA LIHESLATURAN GUAHAN  
2011 (FIRST) REGULAR SESSION

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Bill No. 264-31 (cor)

Introduced by:

A.A. Yamashita, PhD

**AN ACT TO AMEND CHAPTER 9, DIVISION 2 OF TITLE 17,  
GUAM CODE ANNOTATED RELATIVE TO EDUCATION &  
TRAINING FACILITIES AND OPPORTUNITIES FOR THE  
INDIVIDUAL WITH A DISABILITY.**

1 **BE IN ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahan*  
3 intends to correct the language in Chapter 9, Division 2 of Title 17, Guam Code  
4 Annotated to ensure that local statutes are in compliance with the federal mandates  
5 of the Individuals with Disabilities Education Act (IDEA), and to reflect current  
6 language usage when referring to persons with disabilities.

7 **Section 2.** Chapter 9 of Title 17, Guam Code Annotated, is amended to  
8 read:

9 **CHAPTER 9**

10 **EDUCATION AND TRAINING FACILITIES**  
11 **AND OPPORTUNITIES FOR ~~THE HANDICAPPED~~**  
12 **THE INDIVIDUAL WITH A DISABILITY**

13 **§ 9101. Declaration of Public Policy.** It is and shall be the duty of the  
14 various divisions and schools of the Department of Education to make available a  
15 free appropriate public education to all children with disabilities residing on Guam  
16 between the ages of ~~birth~~ three through twenty-one (21) (~~inclusive~~) including  
17 children with disabilities who have been suspended or expelled. The Department

1 of Education shall make available early intervention services for eligible infant  
2 toddlers ages birth through two. This Section and all other sections shall be in  
3 conformity with the Individuals with Disabilities Education Act (“IDEA”), its  
4 amendments, implementing regulations, and all other laws and regulations relating  
5 to the education of children with disabilities. ~~The e~~Exception to Free Appropriate  
6 Public Education (“FAPE”) shall be made for students ages eighteen (18) through  
7 twenty-one (21) who, in the last educational placement prior to their incarceration  
8 to an adult correction facility (a) were not actually identified as being a child with a  
9 disability and (b) did not have an Individualized Education Program (“IEP”) under  
10 IDEA. The purpose of this Chapter is to ensure that special education ~~or~~ and  
11 related services are provided to all children with disabilities of public school  
12 age, or within the broader age limits provided in this Chapter.

13       **§ 9102. Definitions.** (a) All identified children with disabilities from birth  
14 through age twenty-one (21) described in the following paragraphs (b, c, d) are  
15 subject to the policies of the Guam Education Policy Board (the *Board*).

16       (b) The term *children with disabilities* means those children evaluated in  
17 accordance with the requirements of IDEA as having ~~mental retardation,~~ an  
18 intellectual disability, a hearing impairment including deafness, a speech or  
19 language impairment, a visual impairment including blindness, emotional  
20 ~~disturbance,~~ disabilities, an orthopedic impairment, autism, traumatic brain injury,  
21 and other health impairment, a specific learning disability, deaf-blindness, or a  
22 multiple ~~disability,~~ disabilities, and who because of that impairment needs special  
23 education ~~or~~ and related services. For students ages eighteen (18) to twenty-one  
24 (21), the Board shall promulgate policies that are aligned with current policies on  
25 the education for all students.

26       (c) The term *infant or toddler with a disability* means infant or toddler with a  
27 disability under three (3) years of age who needs early intervention services

1 because they are experiencing developmental delays or have a diagnosed physical  
2 or mental condition that has a high probability of resulting in developmental delay.  
3 This includes infants or toddlers under three (3) years of age who are at risk of  
4 having substantial developmental delays as measured by appropriate diagnostic  
5 instruments and procedures if early intervention services are not provided.

6 (d) For individuals aged three (3) through five (5), the term *children with*  
7 *disabilities* means those children who are experiencing developmental delays, as  
8 defined by the Board and as measured by appropriate diagnostic instruments and  
9 procedures, in one (1) or more of the following areas:

10 physical development, cognitive development, communication development, social  
11 or emotional development, or adaptive development, and for that reason, these  
12 children need special education ~~or~~ and related services.

13 (e) *Department* means the Department of Education.

14 (f) *Board* means the Guam Education Policy Board.

15 (g) *FAPE* means Free Appropriate Public Education.

16 (h) *IEP* means Individualized Education Program.

17 (i) *IDEA* means Individuals with Disabilities Education Act.

18 ~~(k)~~ (j) *Parent* for purpose of IDEA means:

19 ~~a natural or adoptive parent of a child;~~

20 (1) a guardian generally authorized to act as the child's parent, or  
21 authorized to make educational decisions for the child, (but not the local  
22 government if the child is a ward of the government);

23 (2) a person acting in the place of a biological or adoptive parent  
24 (such as grandparent or stepparent or other relative with whom the child  
25 lives, or a person who is legally responsible for the child's welfare); or

26 (3) a surrogate parent who has been appointed in accordance with  
27 IDEA.

1           (4) foster parent of a child (unless a foster parent is prohibited by  
2           State law from serving as a parent);

3           (5) A biological or adoptive parent of a child.

4           **§ 9103. Child Find.**

5           (a) The continuing IDEA Part “B” eligibility documents for Special  
6 Education will ensure that all children residing on Guam, including children with  
7 disabilities attending private schools, regardless of the severity of their disabilities,  
8 and who are in need of special education ~~or~~ and related services, are identified,  
9 located ~~or~~ and evaluated and a practical method is developed and implemented to  
10 determine which children with disabilities are currently receiving needed special  
11 education ~~or~~ and related services. This also applies to highly mobile children with  
12 disabilities (such as migrant and homeless children and wards of the government)  
13 and children suspected of being a child with a disability as defined in this Act and  
14 in need of special education, even though they are advancing from grade to grade.  
15 The policies and procedures for referral, evaluation, eligibility, or placement and  
16 the provision of FAPE shall be established by the Board through required  
17 continuing eligibility documents under Part “B” of IDEA and its amendments, and  
18 the Handbook for the Delivery of Special Education services.

19           (b) Referral. Pursuant to IDEA, children suspected of having a  
20 disability and who are in need of special education ~~or~~ and related services are to be  
21 referred for an evaluation.

22           (c) In any procedure related to the identification, evaluation, or educational  
23 placement of the child or the provision of a free appropriate public education to the  
24 child, the Department of Education shall comply with those procedures stated in  
25 IDEA, its amendments, and implementing regulations. These include evaluation  
26 procedures, the development and implementation of an Individualized Education

1 Program (IEP), determination of placement in the least restrictive environment,  
2 and the provision of a free appropriate public education.

3 (d) For individuals with disabilities from birth through age two (2), an  
4 Individualized Family Services Plan will:

5 1. Be developed by a multidisciplinary team (involved in the provision of  
6 early intervention services), including the parents.

7 2. Be based on a multidisciplinary assessment of the unique strengths and  
8 needs of the infant or toddler and the identification of services appropriate to meet  
9 such needs.

10 3. Be based on a family-directed assessment of the resources, priorities, and  
11 concerns of the family and the identification of the support and services necessary  
12 to enhance the family's capacity to meet the developmental needs of the infant or  
13 toddler with a disability.

14 **§ 9104. Special Education Teachers, Classes, Materials, Opportunities,**  
15 **Day Schools, Hospital Classes and Home Instruction.**

16 The Department of Education shall, subject to the limitations specified in this  
17 Chapter, ensure appropriate special education teachers, aides, and materials for all  
18 children identified in accordance with IDEA as needing special education ~~or~~ and  
19 related services, so that such children shall be provided instruction in the least  
20 restrictive environment and the establishment and maintenance of special classes  
21 occurs only when the nature and severity of the disability of a child is such that  
22 education in regular classes with the use of supplementary aids and services cannot  
23 be achieved satisfactorily. In addition, the Department of Education shall (i)  
24 provide for the proper training and development of special education teachers,  
25 aides and staff to ensure continued quality special education services, (ii) ensure  
26 that appropriate educational materials and supplies are furnished, and (iii) ensure  
27 that appropriate educational facilities are provided to ensure the provision of a free

1 appropriate public education, as set forth in this Chapter. Such classrooms shall be  
2 located in an appropriate area within a school campus, given specific needs such as  
3 proximity to the special transportation pick-up and drop-off point, proximity to the  
4 nurses' office, and the like. Such classrooms, when specifically built for or utilized  
5 by children with disabilities, shall not be reassigned for any other educational  
6 program needs, unless this reassignment is to relocate the children with disabilities  
7 to another appropriate classroom.

8       **§ 9105. Administration of the Chapter.** This Chapter shall be  
9 administered by the Superintendent of Education and the Board shall promulgate  
10 such rules and regulations as it may deem necessary for the proper administration  
11 of this Chapter. The Board shall prescribe the standards under which facilities are  
12 furnished or services purchased. The Superintendent of Education shall be  
13 responsible for administering such standards and conditions.

14       **§ 9106. Cooperation with other Agencies. Gifts and Donations.** The  
15 Division of Special Education and other school agencies are required to cooperate  
16 with other agencies within Guam, both public and private, that are interested in  
17 working toward the education or training of children with disabilities. Educational  
18 agencies are authorized to accept gifts, donations, or aid from such private  
19 agencies.

20       **§ 9107. Advisory ~~Committee.~~ Panel.** The Superintendent of Education  
21 shall establish and maintain an advisory panel on disabilities. Membership and  
22 roles of the panel shall comply with the requirements outlined in IDEA, its  
23 amendments, and implementing regulations. The members of the Advisory Panel  
24 shall be appointed by the Superintendent.

25       **Section 3. Severability.** *If* any provision of this Law or its application to  
26 any person or circumstance is found to be invalid or contrary to law, such  
27 invalidity shall *not* affect other provisions or applications of this Law which can be

1 given effect without the invalid provisions or application, and to this end the  
2 provisions of this Law are severable.