



July 18, 2023

Ref: AG23-0335

Honorable Therese M. Terlaje

Speaker

and

Honorable Chis Barnett

Chairman and Senator

Committee on Education, Public Safety and the Arts

Mina'trentai Siette Na Liheslaturan Guåhan

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

Subject: Legal Opinion, Bill No. 62-37; Education & Charter Schools; "Every Child is Entitled to an Adequate Public Education Act"

Hafa Adai Madam Speaker and Chairman Barnett:

Please find the attached July 12, 2023 veto message from the Governor of Guam pertaining to Bill Number 62-37, a legislation allowing for private schools to convert to charter schools. We note that there are strong indications that the Department of Education will be unable to start the 2023-2024 school year on August 9, 2023. We at the AG's Office are also attempting to reconcile the Government of Guam's duty and liability pertaining to the *Every Child is Entitled to an Adequate Public Education Act*, Guam Public Law No. 28-45, passed on June 6, 2005, in light of continuing problems with DOE providing a timely and adequate education service to our community.

Bill 62-37 is an act to amend §§12104, 12106, and 12108(b), and to repeal §§12107(r) and (t) of Chapter 12, Title 17, Guam Code Annotated, relative to the process for charter school petitions. The Organic Act of Guam, 48 U.S. Code §1421b(a), provides that "no law shall be enacted in Guam respecting an establishment of religion or *prohibiting the free exercise thereof*, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of their grievances."

The Supreme Court of the United States has made clear that the Free Exercise Clause forbids the government from requiring religious entities to "*choose between their religious beliefs and receiving a government benefit.*" *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2023 (2017). Once a State elects to fund private activity, "it cannot disqualify some [organizations] solely because they are religious." *Espinoza v. Montana Dep't of Revenue*, 140

Office of the Attorney General

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"Guam's Toughest Law Enforcers"

S. Ct. 2246, 2261 (2020). A State cannot “exclude some members of the community” from a public benefit program “because of their religious exercise” or because of “their anticipated religious use of the benefits.” *Carson v. Makin*, 142 S. Ct. 1987, 1988 (2022).

The Free Exercise Clause of the First Amendment protects against “indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.” *Lyng v. Northwest Indian Cemetery Protective Assn.*, 458 U.S. 439, 450 (1988). The Court held that the Free Exercise Clause did not permit Missouri to “expressly discriminate [] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017). In *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020) the Court held that a provision of the Montana Constitution barring government aid to any school “controlled in whole or in part by any church, sect, or denomination” violated the Free Exercise Clause by prohibiting families from using otherwise available scholarship funds at religious schools. “A State need not subsidize private education,” the Court concluded, “[b]ut once a State decides to do so, it cannot disqualify some private schools solely because they are religious.” *Id.* The Court held that a benefit program under which private citizens “direct government aid to religious schools wholly as a result of their own genuine and independent private choice” does not offend the Establishment Clause. *Zelman v. Simmons-Harris*, 436 U.S. 639, 652 (2002).

The Constitution “applies to acts of the [government], not to acts of private persons or entities.” *Rendell-Baker v. Kohn*, 457 U.S. 830, 837-38 (1982). Acts of a private entity may be subject to constitutional constraint “if, though only if, there is such a close nexus between the State and the challenged action that [it] may be fairly treated as that of the State itself.” *Brentwood Acad. V. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001). State-action analysis asks: Who is “responsible for the specific conduct of which the plaintiff complains”? *Id.* Private entities regularly help States fulfill important obligations. When a State partners with private organizations to expand educational options, the State is not delegating power over an area of exclusive state control.

States have a duty to provide healthcare, obligations to provide shelter, foster care, universal pre-K, and even a healthful environment. Countless private organizations provide services toward these important goals, often with the State’s encouragement and financial support. There is a vast network of private hospitals, clinics, daycares, homeless shelters, halfway houses, foster care agencies, environmental groups, and many other organizations that partner with governments. Nothing in these financial relations between these groups and the States transforms them into arms of the government.

In Guam there are many faith-based organizations that receive money from the government. These include grants given to Catholic Social Services to run a homeless shelter and soup kitchen. Other faith-based entities run drug treatment centers receiving government money. Governments provide substantial and critical funding to non-profit groups that help perform important public services like homeless shelters, refugee assistance organizations, childcare providers, medical facilities, foster-care agencies, food pantries, and many other social welfare organizations.

The U.S. Court of Appeals for the Fourth Circuit held in *Peltier v. Charter Day Schools*, Nos. 20-1001, 20-1023 (4th Cir.) that a public charter school's dress code policy discriminated against female students on the basis of sex. The appellate court reached this conclusion by finding that public charters are state actors and therefore bound by the Constitution. Public charters are publicly funded entities that are subject to the performance standards outlined in their charters. Traditional public schools are *state actors*, entities that perform their functions under and with the appearance of state authority. Traditional private schools operate with relative independence from the state. Public schools are recognized as state actors for purposes of 14th Amendment liability. Private schools are not necessarily state actors for these purposes because they typically do not provide public education. The Supreme Court has held that states traditionally provide public education, which only includes nonsectarian, general education. Any education outside of these boundaries is no longer a traditionally exclusive state function.

The First, Third, and Ninth Circuits have all held that a private education contractor does not engage in state action, unless the State coerced or encouraged the challenged conduct. See *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806 (9th Cir. 2010) (*private operator of public charter school not a state actor when it fired teacher*). *Logiodice v. Trs. Of Maine Cent. Inst.*, (1st Cir. 2002) (*private contractor providing exclusive source of public education not a state actor when it disciplined student*).

The Guam Academy Charter School Act of 2009 provides for the establishment of charter schools, similar to many other states. The duties and powers are set forth in 17 GCA §12107 and provide in (b) "*an Academy Charter School shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.*" There is a process in which the Council may place an Academy Charter School on probation or revoke the Academy Charter School's Charter state in 17 GCA §12114. The Guam Charter School Act does in no way create charter schools that would be state actors. The 9th Circuit in *Caviness*, which is generally given substantial weight in Guam cases, has held that a private education contractor does *not* engage in state action, unless the State coerced or encouraged the challenged conduct. Simply, there is nothing in the Guam Charter Act that implies that Guam would coerce or encourage improper conduct from a Guam Charter School. In fact, Guam Charter Schools are strictly prohibited from discrimination and are subject to all federal and state laws as provided in 17 GCA §12107.

There is no violation of the Establishment Clause by allowing religious schools to operate as charter schools under the Guam Academy Charter School Act. What is in issue in this case is the Free Exercise Clause of the US Constitution in which the Supreme Court of the United States has firmly held that the Free Exercise Clause forbids the government from requiring religious entities to "choose between their religious beliefs and receiving a government benefit." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2023 (2017). A State cannot "exclude some members of the community" from a public benefit program "because of their religious exercise" or because of "their anticipated religious use of the benefits." *Carson v. Makin*, 142 S. Ct. 1987, 1988 (2022). Bill 62-37 would not violate the US Constitution or the Guam Bill of Rights set forth in 42 US Code §1421b.

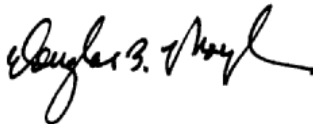
Conclusion

As such, it is our position that there exists no legal impediment, including our First Amendment Clause as incorporated by our 1950 Organic Act (Religious Prohibition Clause and Establishment Clause) from allowing the Guam Legislature to move forward in passing Bill Number 62-37, as a statement of the will of our People. 48 USC § 1421b(a).

In light of the numerous problems facing our public education community, and the Government of Guam's duties under the "*Every Child is Entitled to an Adequate Public Education Act*," Public Law No. 62-37 provides a potentially effective way that our government can comply with this Act for our children by creating effective options for our government, and *not* substantially disrupting our public school children's upcoming school year and significantly inconveniencing their parents.

Please do not hesitate to contact this Office if you have any further questions. Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read "Douglas B. Moylan". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping tail.

Douglas B. Moylan
Attorney General of Guam

Attachments (11)



UFISINAN I MAGA'HĀGAN GUĀHAN
OFFICE OF THE GOVERNOR OF GUAM

Transmitted via email to: speaker@guamlegislature.org

July 12, 2023

HONORABLE THERESE M. TERLAJE, Speaker

I Mina 'trentai Siette Na Liheslaturan Guāhan

37th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: Bill No. 62-37 (COR) - AN ACT TO AMEND §§ 12104, 12106, AND 12108(b); AND TO REPEAL §§ 12107(r) AND (t) OF CHAPTER 12, TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE PROCESS FOR CHARTER SCHOOL PETITIONS

Hāfa Adai Madame Speaker,

The First Amendment of the United States Constitution guarantees the freedom of religion, and protects religious diversity by prohibiting the use of government power to enforce religious uniformity, to endorse or favor one religion over another. This concept is commonly encapsulated in the phrase “the separation of church and state.” The Establishment Clause of the United States Constitution applies in Guam through Sections 1421b(a) and (u) of the Organic Act of Guam.

Over time, the United States Supreme Court (“SCOTUS”) has issued numerous decisions further refining both the protections and limitations provided in the First Amendment, particularly in the area of education. Several of these decisions have been referenced in the legislative findings in support of Bill No. 62-37, which, if enacted, would allow private religious schools to petition the Guam Academy Charter Schools Council to convert to an Academy Charter School. In essence, this bill would allow the operation of religious schools using public funds.

However, the referenced cases—*Carson v. Makin*, 142 S. Ct. 1987 (2022), *Espinoza v. Montana Dept. of Revenue*, 140 S. Ct. 2246, 2254 (2020), and *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) – do not in fact support the creation of state-sponsored religious schools. Rather, these cases authorized government assistance to *individuals*, families or non-profit organizations in the form of tuition assistance, scholarships or grants. In all three cases, the government did not exercise regulatory authority over the school receiving the government money. This is a major distinction between Bill No. 62-37 and the factual situation in the three cited SCOTUS cases.

These cases do *not* stand for the proposition that the establishment of religious state-sponsored charter schools is consistent with the Establishment Clause of the First Amendment. In fact, despite the current conservative make-up of the SCOTUS, only one religious charter school presently exists in the entire nation, the St. Isidore of Seville Catholic Virtual School, established in Oklahoma in June 2023. The recent establishment of St. Isidore is expected to lead to a constitutional battle over whether taxpayer dollars can directly fund religious schools, a question that, despite the representations made in Bill No. 62-37, remains unresolved as of the time of this writing.

Though it is possible the SCOTUS may, in the future, determine that somehow state-sponsored religious charter schools do not constitute “state actors” such that their establishment is prohibited by the

To: Therese M. Terlaje, *Speaker*, 37th Guam Legislature
Fr: Lourdes A. Leon Guerrero, *Governor of Guam*
Date: July 12, 2023
Re: Bill No. 62-37 (COR) - VETO

Page 2 of 2

Establishment Clause, recent activity in SCOTUS indicates otherwise. On June 26, 2023, the SCOTUS declined the opportunity to hear *Peltier v. Charter Day School, Inc.*, Nos. 201001, 20-1023 (4th Cir.), a case involving a charter school in North Carolina. The Fourth Circuit affirmed the District Court's determination that charter schools are a form of public schools and that charter schools are "state actors" that must abide by the Constitution like other public schools. The Fourth Circuit's holding was based on the fact that North Carolina, like Guam, has delegated to the charter school operators part of the state's constitutional duty to provide a free universal elementary and secondary education. The United States Constitution and the Guam Bill of Rights both prohibit the government of Guam from running a religious school, even if it is a charter school. By declining to hear the *Peltier* case, the SCOTUS allowed the Fourth Circuit's holding that charter schools are state actors to stand.


Under the *Peltier* analysis, the Guam Academy Charter School Act of 2009 creates public schools, not private schools. Unlike a private school, a charter school created pursuant to the statute must enroll all students who apply in a timely fashion, and if more students apply than there is space for, the school must use a method such as a lottery to determine who shall be admitted. The charter schools are prohibited from charging tuition because all of the funding for charter schools comes from appropriations from the general fund of the government of Guam. Charter schools are subject to the Guam Procurement Code just like every other government of Guam entity. As with any other government board, the charter school's board of trustee meetings are subject to the requirements of Guam's Open Government law. Taken as a whole, these requirements establish that the Charter Schools Act creates charter schools that are state actors. As state actors, charter schools cannot also be operated as religious schools, which, as discussed, would violate the Establishment Clause.

Based on existing authority, if enacted, Bill No. 62-37 would violate the U.S. Constitution and the Guam Bill of Rights, and expose the government of Guam to lawsuits involving constitutional protections and the illegal expenditure of government funds.

I understand that the bill was passed to help support private religious schools that are struggling financially. I am, myself, the proud product of a religious private school education, an education that is consistent with the religious beliefs of my family. I cannot sign a law that authorizes the use of taxpayer dollars to sponsor the establishment of religious schools, even if the school teaches *my* religion. As state actors or governmental entities, Guam's charter schools must respect the Constitution and the Organic Act of Guam, which clearly prohibit public schools from discriminating based on religion, or promoting or coercing students to engage in religious activities.

For these reasons, I am vetoing Bill No. 62-37.

Senseramente,


LOURDES A. LEON GUERRERO
Maga'hāgan Guāhan
Governor of Guam

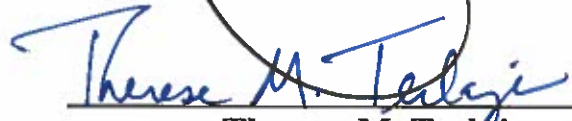
Enclosure: VETO - Bill No. 62-37 (COR)

cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'lāhen Guāhan*, Lt. Governor of Guam
Compiler of Laws

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

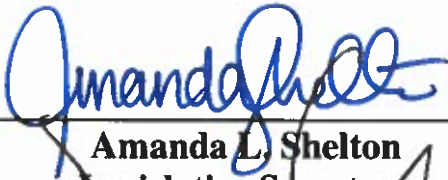
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'HÅGAN GUÅHAN

This is to certify that **Bill No. 62-37 (COR), "AN ACT TO AMEND §§ 12104, 12106, AND 12108(b); AND TO REPEAL §§ 12107(r) AND (t) OF CHAPTER 12, TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE PROCESS FOR CHARTER SCHOOL PETITIONS,"** was on the 30th day of June 2023, duly and regularly passed.



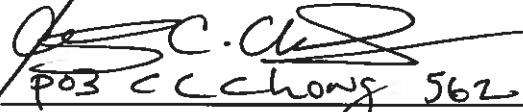
Therese M. Terlaje
Speaker

Attested:



Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 30TH day of June,
2023, at 6:57 o'clock P.M.



P03 CC Chong 562
Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 7/12/2023

Public Law No.

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2023-19468

Jessica Dydascc

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 62-37 (COR)
As amended on the Floor.

Introduced by:

Chris Barnett
Tina Rose Muña Barnes
Christopher M. Dueñas
Telo T. Taitague
Thomas J. Fisher
Dwayne T.D. San Nicolas
Sabina Flores Perez
Amanda L. Shelton
Joe S. San Agustin
Roy A.B. Quinata
Frank Blas, Jr.
Jesse A. Lujan
Joanne Brown
William A. Parkinson
Therese M. Terlaje

AN ACT TO AMEND §§ 12104, 12106, AND 12108(b); AND TO REPEAL §§ 12107(r) AND (t) OF CHAPTER 12, TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE PROCESS FOR CHARTER SCHOOL PETITIONS.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* intends
3 to create Charter Schools to address critical areas of education currently neglected
4 and where traditional methods of instruction have failed. From their earliest years in
5 school, Guam students remain in great need of learning and mastering the *CHamoru*
6 language, music, physical fitness, and the performing arts. Students spend

1 approximately eight (8) hours a day in school-related activities and in today's world
2 it requires alternative approaches to teaching and learning. Most students, and
3 especially those not performing well in the traditional institutional classroom style
4 of instruction, enjoy a more engaging and relevant interaction with their teachers and
5 classmates. Benjamin Franklin said it best: Tell me and I forget; Teach me and I may
6 remember; Involve me and I learn!

7 The Guam Vocational Technical High School (Trade) enjoyed great success
8 with its limited application of this learning environment in its "shops" portion of the
9 school day. Trade graduates mastered their selected career field subjects and
10 performed well in their jobs. University of Guam (UOG) accounting students
11 experienced great success with the addition of internships to their subject mastery
12 while still attending UOG. Performance and competition are distinct and proven
13 methods of making learning fun for students. Performance and competition also
14 increase student interest, learning, and proficiency. "Practice makes perfect" is about
15 the power of habitual and instinctive action. Student enjoyment of high levels of
16 learning and relevancy lead to higher standards of achievement.

17 The inner child oftentimes determines students' interests in school and quality
18 of life as adults. Fulfilling students' full potential in the arts while in school leads to
19 positive, contributing members of society. Music, sports, fitness, creative writing
20 and related artistic performance, and the competitive aspects of students' education
21 experience, fulfill adolescents during a most critical time in their lives. Project-based
22 learning (PBL) involves students designing, developing, and constructing hands-on
23 solutions to a problem. The educational value of PBL is that it aims to build students'
24 creative capacity to work through difficult or ill-structured problems, commonly in
25 small teams. Community interaction, stage performances, game competition,
26 individual and team events all provide students with skills they will value and use
27 for a lifetime.

1 The Supreme Court of the United States over the past five (5) years issued
2 rulings prohibiting the historic distinction between sectarian and non-sectarian
3 private schools. The Court invalidated discrimination between sectarian and non-
4 sectarian government funding for schools. *Carson v. Makin* (142 S. Ct. 1987 (2022)),
5 *Espinoza v. Montana Dept. of Revenue*, 140 S. Ct. 2246, 2254 (2020), and *Trinity*
6 *Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

7 Therefore, *I Liheslaturan Guåhan* intends to remove any discrimination or
8 distinction between private sectarian or non-sectarian applicants for converting
9 existing schools or for new charter schools. *I Liheslaturan Guåhan* recognizes the
10 enormous contribution and history of private sectarian education on Guam and
11 intends for all applicants to be considered on their records and applications to convert
12 to an Academy Charter School.

13 **Section 2.** § 12104 of Chapter 12, Title 17, Guam Code Annotated, is
14 hereby *amended* to read as follows:

15 **“§ 12104. Process for Filing Charter Petitions.**

16 (a) Private, religious schools shall be eligible to apply to convert to
17 an Academy Charter School under this Chapter.

18 (b) Existing public or private school. An eligible applicant seeking
19 to convert a public or private school into an Academy Charter School:

20 (1) shall prepare a petition to establish an Academy Charter
21 School that meets the requirements of § 12105 of this Chapter;

22 (2) shall provide a copy of the petition to:

23 (A) the parents and guardians of minor students
24 attending the existing public or private school;

25 (B) adult students attending the existing public or
26 private school;

27 (C) employees of the existing public or private school;

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(D) parents and guardians of minor students who attend the school grade immediately lower than the first (1st) school grade which is served by the public or private school which is the subject of the conversion petition; and

(E) each Mayor which represents an area within the attendance area of the public or private school which is the subject of the conversion petition; and

(3) shall file the petition with the Council for approval after the petition:

(A) is signed by not less than sixty percent (60%) of the sum of:

(i) the total number of parents and guardians of minor students attending the public or private school; and

(ii) the total number of adult students attending the public or private school; and

(iii) the total number of full-time teachers currently assigned to the public or employed by the private school.

(B) New School. An eligible applicant seeking to establish an Academy Charter School, but not converting an existing public or private school, shall file with the Council for approval a petition to establish an Academy Charter School that meets the requirements of § 12105 of this Chapter.

(C) Limitations on Multiple Petitions. An eligible applicant may not file more than one (1) petition to establish an Academy Charter School during a calendar year.

1 (D) A petition to establish an Academy Charter School,
2 or to convert a public or private school, is a public document.”

3 **Section 3.** § 12106 of Chapter 12, Title 17, Guam Code Annotated, is
4 hereby *amended* to read as follows:

5 **“§ 12106. Process for Approving or Denying Charter School**
6 **Petitions.**

7 (a) **Schedule.** An eligible applicant seeking to establish an Academy
8 Charter School *shall* submit a petition pursuant to § 12105 of this Chapter to
9 the Council no later than the first Monday of August. However, it is
10 recommended that an eligible applicant consult with the Council prior to
11 submitting the petition. All petitions submitted no later than the first Monday
12 in August *shall* be for the following school year. The deadline to submit a
13 petition to establish a non-converted public school into an Academy Charter
14 School or convert a public elementary school into an Academy Charter School
15 for the School Year 2010-2011 *shall* be March 8, 2010. The deadline to submit
16 a petition to establish an existing, accredited, non-converted private school
17 into an Academy Charter School or convert a private Pre- Kindergarten-Three
18 (PreK-3) through at least eighth (8th) grade school into an Academy Charter
19 School for the School Year 2023-2024 *shall* be September 1, 2023.

20 (b) **Public Hearing.** No later than forty-five (45) days after a petition
21 to establish an Academy Charter School is filed with the Council, and no later
22 than thirty (30) days for a petition to convert an existing school, the Council
23 shall hold a public hearing on the petition to gather the information that is
24 necessary for the Council to make the decision to approve or deny the petition.

25 (c) **Notice.** Ten (10) days before the scheduled time of the public
26 hearing on a petition to establish an Academy Charter School, the Council
27 shall:

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(1) send a written notification of the public hearing to the eligible applicant;

(2) post notice of the public hearing at a place convenient to the public in the administrative office, cafeteria, and the classrooms of the public or private school which is subject to be converted into an Academy Charter School;

(3) post notice of the public hearing at a place convenient to the public in the administrative office, cafeteria and the classrooms of the public or private school which is school grade lower than the first (1st) school grade which is served by the public or private school which is subject to conversion; and

(4) post notice of the public hearing at a place convenient to the public in the Mayor's office which represents an area within the attendance area of the public or private school which is the subject of the conversion petition.

(d) The Council shall approve a petition to establish an Academy Charter School, if:

(1) the Council determines that the petition satisfies the requirements of this Chapter;

(2) the eligible applicant who filed the petition agrees to satisfy any condition or requirement, consistent with this Chapter and other applicable law that is set forth in writing by the Council as an amendment to the petition;

(3) the Council determines that the Academy Charter School has the ability to meet the educational objectives outlined in the petition; and

1 (4) the approval will not cause the Council to exceed a limit
2 under Subsection (h) of this Section.

3 (e) The Council shall approve and admit a new or converted Pre-K3
4 through at least eighth (8th) grade school whose curriculum is Project Based,
5 utilizing a Critical Thinking method of learning resulting in measurable
6 proficiency in the *CHamoru* language and history, music, physical fitness, and
7 the performing arts.

8 (f) The Council shall approve or deny a petition to establish an
9 Academy Charter School not later than sixty (60) days after the conclusion of
10 the public hearing on the petition and not later than thirty (30) days for a
11 petition to convert an existing school.

12 (g) Denial Explanation. Written notice of the Council's action shall
13 be sent to the eligible applicant. If the petition is not approved, the reasons for
14 the denial and suggested remedial measures, if any, shall be clearly stated in
15 the notice sent by the Council to the eligible applicant. If the petition is not
16 approved, the eligible applicant may amend the petition to address objections
17 and any suggested remedial measures and resubmit the petition to the Council.
18 The Council shall approve or disapprove the resubmitted petition within
19 twenty (20) days after receiving it. If the petition is not approved, the eligible
20 applicant may appeal the decision of the Council to the Appeals Board.

21 (h) The total number of Academy Charter Schools operating on
22 Guam under this Chapter at any one (1) time *shall not* exceed seven (7). At
23 least two (2) Academy Charter Schools *shall* be an elementary school; at least
24 one (1) Academy Charter School *shall* be a middle school; at least one (1)
25 Academy Charter School *shall* be a high school; and at least one (1) Academy
26 Charter School *shall* be a school servicing elementary and middle school
27 students. An Academy Charter School applicant *shall* submit a written request

1 to the Superintendent or the Guam Education Board to determine whether an
2 available or suitable facility exists within the Department before the applicant
3 submits its application to the Council. If a response is not provided within
4 thirty (30) days of receipt of the request, the applicant may submit its
5 application without said determination to the Council.”

6 **Section 4.** §§ 12107(r) and (t) of Chapter 12, Title 17, Guam Code
7 Annotated, are hereby *repealed*:

8 **“§ 12107. Duties and Powers, and other Requirements, of**
9 **Charter Schools.**

10 (r) An Academy Charter School shall not be home based.”

11 **Section 5.** § 12108(b) of Chapter 12, Title 17, Guam Code Annotated, is
12 hereby *amended* to read:

13 “(b) In the case of the first Trustees of an Academy Charter School to
14 be elected or selected after the date on which the school is granted a Charter,
15 the election or selection of the members under Subsection (a) of this Section
16 shall occur on the earliest practicable date after classes at the school have
17 commenced. Until such date, any other members who have been elected or
18 selected shall serve as interim Trustees. Such an interim Board of Trustees
19 may exercise all of the powers, and shall be subject to all of the duties, of a
20 Board of Trustees. Converted existing school Trustees shall serve an initial
21 term of three (3) years after the date on which the school is granted a Charter.”

22 **Section 6. Effective Date.** This Act shall be effective upon enactment.

23 **Section 7. Severability.** If any provision of this Act or its application to any
24 person or circumstance is found to be invalid or inorganic, such invalidity shall not
25 affect other provisions or applications of this Act that can be given effect without
26 the invalid provision or application, and to this end the provisions of this Act are
27 severable.