July 13, 2018

OPINION MEMORANDUM

Honorable Joe S. San Agustin
Chairman, Committee on Education, Finance, and Taxation
I Mina 'Trentai Kuattro na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Subject: Validity of Guam Academy Charter Schools Council Approval of Guahan Academy Charter School Charter Renewal Application (Ref. No. LEG 18-0347)

Dear Chairman San Agustin:

This is in response to your June 15, 2018 request for a legal opinion on the validity of the Guam Academy Charter Schools Council’s (Council) June 14, 2018 decision to renew the Charter of the Guahan Academy Charter School (GACS). Your stated question was “does a charter school that fails to meet the standards laid out by law automatically lose its charter.”

You subsequently clarified your request to ask more specifically whether the Council should have approved GACS’s application to renew its Charter given the latter’s failure to attain accreditation as required by 17 G.C.A. § 12107(u). Under the heading Duties and Powers, and other Requirements, of Charter Schools, §12107(u) states, “An Academy Charter School shall initiate the process for accreditation within the first one hundred twenty (120) days of opening and attain accreditation within five (5) years of opening.

1 As we indicated in our July 3, 2018 interim response to you, our review of this matter has been hampered by the unavailability of pertinent records. No records were provided with your initial June 15th letter and only some have since been made available to us on a piecemeal basis by the Guam Academy Charter Schools Council (Council) upon our specific requests. Thus, we have had to reconstruct, as best we could, the procedural history and timeline of Guahan Academy Charter School’s (GACS) Charter, including the Council’s initial approval of the Charter in 2010, a 2015 extension, and the recent renewal action. And even then, we do not feel the entire pertinent record has been provided to us for this review.
Statement of Facts

On August 3, 2010, the Guam Academy Charter Schools Council (Council) approved Guahan Academy Charter School’s petition to be Guam’s first Charter School authorized under Public Law 29-140, the Guam Academy Charter Schools Act of 2009. GACS opened three years later in School Year 2013-2014. On or about June or July 2015, the Council appears to have approved GACS’s Petition for Continuing Operations resulting in a three (3) year extension of the Charter to August 3, 2018.2 On or about April 2, 2018, GACS submitted to the Council an application for renewal of its Charter pursuant to 17 G.C.A. § 12113(b). The Council held a public hearing on the renewal application on May 21, 2018, and on June 14, 2018, voted to renew GACS’s Charter by a 3-1 vote, with the Chairwoman not voting. On June 18, 2018, the Office of the Attorney General received your June 15th letter requesting we “look into this issue and if the renewal is valid according to public law.”

Discussion

Title 17 G.C.A. § 12113(a) states that “[a] Charter granted to an Academy Charter School shall remain in force for a five (5) year period, unless revoked . . . .” The statute also provides that “[a] Charter may be renewed an unlimited number of times, each time for a five (5) year period.” Id. at subsection (b). The law further states that:

The Council shall approve an application to renew the Charter that is filed in accordance with subsection (b) of this Section, except that the Council shall not approve such application if the Council determines that:

(1) The Academy Charter School committed a material violation of applicable laws or a material violation of the condition, terms, standards, or procedures set forth in its Charter, including violations relating to the education of children with disabilities; or

(2) The Academy Charter School failed to meet the goals and student academic expectations set forth in its Charter.

Id. at subsection (e) (emphasis added).

The law therefore requires the Council to approve an application for renewal except when the Council itself determines that the Academy Charter School (i) committed a material violation of applicable laws; (ii) committed a material violation of the conditions, terms, standards or

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2 As of the issuance of this Opinion, this Office did not have the Council meeting minutes or recording of the 2015 Council meeting where presumably this action was taken and is thus unable to ascertain the specific details of this extension. In an April 2, 2018 letter to the Council transmitting its renewal application for consideration, GACS stated that in June 2015, the Council required GACS to file a “Petition for Continuing Operations” and that the Council’s approval of such was a “renewal [] for the period of three academic years, SY2015 through SY2017.” Letter from Fe Valencia-Ovalles, GACS Chairwoman, to Amanda Blas, Council Chairwoman (April 2, 2018).
procedures contained in its Charter; or (iii) failed to meet the goals and student academic expectations set forth in its Charter. Id. It is our opinion that § 12113(e) provides the Council both the authority and discretion to make the specific determination(s) that will obviate the automatic requirement to approve a school’s Charter renewal application and mandate its disapproval instead.

At its June 14, 2018 meeting, the Council did not make any of the foregoing § 12113(e) determinations that would have required disapproval of GACS’s renewal application. Instead, the Council voted 3-1 in favor of renewal. At issue is whether the Council erred in not determining that GACS’s failure to attain accreditation constituted a material violation of applicable law, namely § 12107(u) requiring a Charter school to become accredited within five (5) years of opening.

There is ample evidence in the recording of the Council’s May 21, 2018 public hearing on GACS’s renewal application that the Council was aware of the accreditation matter as it received public comment on GACS’s renewal application from the public, including the school’s students, parents, teachers and staff. Furthermore, the draft minutes of the Council’s June 14, 2018 meeting indicates that the Council addressed and discussed the issue of accreditation.3 For example, after Dr. Velma Sablan addressed the Council and “[r]eported on GACS student achievement and assessment protocol[,]” opined that “the school’s use of Direct Instruction and faculty and staff makes (sic) the school successful[,]” and “[r]ecommended the continuation of GACS’ charter[,]” Councilmember Cel Babauta commented that “while the law requires a charter school to be accredited within five years of opening, the school has also reached several educational milestones and achievements.”

The June 14, 2018 draft minutes indicate also that “GACS provided the Council with an updated version of [its] Accreditation Process Timeline.” GACS further informed the Council that the fee required for appeal to the Western Association of Schools and Colleges’ (WASC) had been paid.4 During this discussion, Councilmember Babauta is recorded as stating that “it is important GACS have accreditation milestones to meet” because they “will help GACS stay on track for accreditation.”

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3 The Council has not met since the June 14, 2018 Special Meeting and therefore has not officially adopted the June 14, 2018 meeting minutes.

4 The Council had earlier been informed of a May 1, 2018 letter from the Accrediting Commission for Schools of the Western Association of Schools and Colleges (ACS WASC) providing GACS with a Notification of Withholding of Candidacy Status for Guahan Academy Charter School for Violations Concerning Requirement of Legal Authority, Substantive Changes, and Candidates for Accreditation. In the notification letter, ACS WASC wrote that “at the Commission’s April 2018 meeting the Commission voted to withhold Guahan’s candidacy status.” ASC WASC noted “significant concerns about the governance and finances of Guahan’s program and caused the Commission to believe that Guahan no longer meets [WASC’s] criteria for candidacy status.” On June 1, 2018, GACS appealed WASC’s decision.
Yet in spite of (i) being cognizant that GACS had not attained accreditation and likely would not in the near future; (ii) Councilmember Yuka Oguma’s statement to the effect that “the law is clear about accreditation[;]” and (iii) an open acknowledgement from a Council member that “the law requires a charter school to be accredited within five years of opening,” the Council did not determine GACS’s failure to attain accreditation within five (5) years to be a “material” violation of either the law or other requirement set forth in § 12113(e), and it voted to renew the Charter.

In our opinion, the Council was within its authority to do so. Even in the case where there may be a violation or non-compliance with existing law, § 12113(e) suggests that the Council has the discretion to determine whether such a violation was material enough to warrant mandatory disapproval of a renewal application. In this instance, against the fact that GACS had not attained accreditation, Councilmembers may have taken into account the school’s efforts to date in the accreditation process, including their recent appeal to WASC. They might have also been persuaded that the gains the school and its students have made over the past years outweigh the five-year accreditation requirement. And finally, they may have considered their decision at the June 14, 2018 meeting to form a Council committee for accreditation -- “to give GACS a chance to improve[,]” and “to hold GACS accountable because councilmembers would be directly involved in the accreditation . . . process[]” -- was preferable to finding the violation material enough to warrant disapproval of the Charter renewal.

The decision regarding materiality is within the purview and discretion of the Council. It should not be second guessed or substituted with others’ opinions, including ours. The Guam Supreme Court has stated that “if a statute is silent or ambiguous, courts should defer to the agency’s reasonable interpretation of the statute” and that “[d]eference is given to the agency interpretation so long as that interpretation neither contravenes clear legislative intent.” Carlson v. Guam Tel. Auth., 2002 Guam 15, ¶ 17 (2002) (internal citations omitted). The statute in this instance does not explicitly require that a failure to attain accreditation within five (5) years is automatic grounds to disapprove a renewal application; instead, it allows the Council to make a determination whether there was a material violation of law for purposes of disapproving a Charter. The Council did not do so, and therefore was required by § 12113(e) to approve GACS’s renewal application.

**Conclusion**

Based upon the foregoing, the Council’s June 14, 2018 approval of GACS’s Charter renewal application is a valid action.

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ELIZABETH BARRETT-ANDERSON
Attorney General

cc: Chairwoman, Guam Academy Charter Schools Council
Superintendent, Guam Department of Education