

GDOE running out of money

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BEFORE Gov. Eddie Baza Calvo decides to move Untalan Middle School to the interim Tiyan campus, funding for the move will have to be identified;

but another concern is the Guam Department of Education running out of money in June. If this were to happen, GDOE will have no option but to shut down all operations, interim GDOE Superintendent Taling Taitano said. Last week, the Governor's

Office cancelled a press conference that was to be held regarding Untalan Middle School. No reason for the cancellation was given by the Governor's Office. Taitano said she has already written to the governor requesting that the funds be released.

Sen. Ben Pangelinan has also written several letters to Calvo, urging him to release the funds.

The reserved funding amounts to approximately \$30 million, Taitano said, which includes the salaries and benefits of all GDOE

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Fireworks light up the sky above Tumon as part of the annual New Year's fireworks display held this year near Gov. Joseph Flores Memorial Beach Park. Matt Weiss / Variety

Brief supports motion to dismiss Davis lawsuit

By Zita Y. Taitano
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GUAM attorney Julian Aguon has submitted a motion on behalf of University of Guam professor Anne Perez Hattori as "amicus

curiae" to dismiss the plebiscite case filed in the District Court of Guam by Arnold "Dave" Davis. Named in the lawsuit are Guam, the Guam Election Commission, GEC members, and Attorney General Lenny Rapadas.

Davis claims his voting rights were violated when he tried to register for the Decolonization Registry but was denied because he is not a native inhabitant of Guam.

According to court documents,

Hattori, who meets the definition of a "native inhabitant of Guam" due to being a descendant of residents who gained U.S. citizenship via the Guam Organic Act, has a "direct personal interest" in

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Hawaii district court judge dismisses Pāgat case

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HAWAII District Court Judge Leslie Kobayashi has granted the Navy's motion to dismiss the Pāgat case, saying the case is already moot.

The order issued last Friday came about a month after the Department of Defense announced it would conduct a supplemental environmental impact statement to re-evaluate firing ranges for the Marine Corps when they transfer to Guam.

In the decision, Kobayashi noted the Record of Decision, which the Department of the Navy and the Department of the Army issued in September 2010, was not a final decision as to the location of the live-fire firing range complex discussed.

Atty. Leevin Camacho, a member of We Are Guåhan, issued a statement regarding the decision of the Hawaii



We Are Guåhan spokesman Leevin Camacho and Joe Quinata, chief program officer for the Guam Preservation Trust, hold a video conference with Department of Defense officials with regard to the Pāgat case. A Hawaii District Court judge has dismissed the case as moot. Zita Y. Taitano / Variety

District Court.

"We wanted the court to continue to oversee the process," Camacho said, "but we are hopeful that DOD will live up to its legal obligations

this time and ensure that the supplemental EIS process is open and honest without the need for court intervention."

The DOD filing stated it would formally commence

the supplemental EIS process in 2012 by holding scoping meetings before preparing and releasing a draft supplemental EIS for comment.

This level of public involve-

ment and participation is something DOD had previously refused to agree to in its motion for voluntary remand filed earlier in 2011.

"Our goal from day one has been to ensure that DOD followed the law," Camacho said. "The preparation of a supplemental EIS is the first victory – a necessary victory – along the way to achieve our ultimate goal of saving Pāgat Village."

The lawsuit was filed in November 2010 by the Guam Preservation Trust, the National Trust for Historic Preservation, and We Are Guåhan, in order to protect the ancient village of Pāgat and the surrounding area, which is comprised of two fresh water caves (Pāgat cave and Marbo cave) as well as significant sites where residents go swimming and fishing.

Meanwhile, a more detailed written order on the decision is expected to follow.

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employees. The reserved amount is equal to four pay periods.

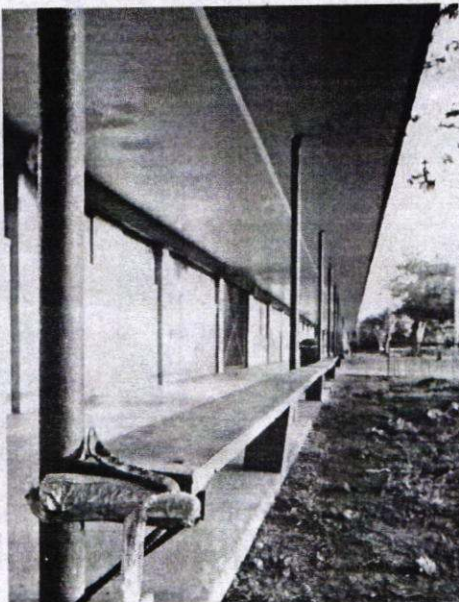
The 15 percent reserve will also negatively impact the University of Guam by reducing their Fiscal Year 2012 budget by almost \$4 million and the Guam Community College by more than \$2 million, Pangelinan said.

Untalan

Meanwhile, Sen. Judi Guthertz last week implored the governor to move Untalan Middle School from its rapidly deteriorating complex to an interim campus at Tiyan.

Guthertz said the 25-acre property was an educational opportunity that should not be allowed to slip away.

"Ideas for utilization of the property are endless and could tie in well with the 'classroom-to-careers' initiative that you've proposed. Perhaps even a new Career and Technical High School could be possible," Guthertz wrote. The senator also urged



The decrepit state of the Untalan Middle School campus has prompted officials to move for the school's transfer to the former temporary JFK campus in Tiyan. Variety file photo

Calvo to use his executive powers to declare Untalan unsafe to allow its relocation to Tiyan.

"Let's roll up our sleeves and get to work on assisting the Guam Department of Education in responding to this critical need. Let's start the new year off

by blessing the students, parents, faculty and staff of L.P. Untalan Middle School with a safe and structurally sound learning environment. Even if the relocation occurs between now and summer, it is worth the effort," Guthertz said.

Lawsuit...

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the case if any decision is made on the matter.

In the brief in support of the motion to dismiss, the plebiscite case was likened to that of "a wolf in sheep's clothing."

Aguon stated the lawsuit by Davis has nothing to do with the discrimination of race or the safeguarding of civil rights, but "seeks to deny a multi-racial, multi-ethnic group of people, namely the pre-1950 residents of Guam and their descendants, from effectively exercising their right to express by plebiscite their desires regarding their future political relationship with the United States of America."

"If and when the time comes, Davis will lose this case on the merits. The Guam statutes he challenges here do not utilize any race-based classification," Aguon stated.

The court document also noted Davis won't be able to prove the plebiscite is race-based, especially since the people who became U.S. citizens from the Organic Act as well as their descendants are now comprised of diverse racial and ethnic groups, to include Caucasians.

Aguon further cited the attorney general's motion to dismiss the case that was filed early last month, which indicated the lawsuit failed to present a justifiable case or controversy. Aguon stated the lawsuit fails for

another reason and "is not ripe for adjudication."

He explained the claimant must "satisfy the threshold requirement imposed by Article III of the U.S. Constitution by alleging an actual case or controversy" and that the policy with regards to what is termed a ripeness doctrine is "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements."

Additionally, Aguon argued that ripeness of the lawsuit is more a question of timing, thus a federal court probably should not resolve issues on events that may not occur as hoped for or may not even happen.

It was pointed out the plebiscite can only be held on a date of the general election that has 70 percent of eligible voters registered as determined by the Guam Election Commission. There is currently no filing by GEC which shows that percentage was met.

Another issue brought forth was how Davis, who has lived on Guam since 1977, waited until 2009 to contact the Department of Justice over the alleged racial discrimination, and then another two years to file a lawsuit.

"Although much remains to be said on the substantive merits of this lawsuit, including that the Decolonization Registry at issue violates no provision of U.S. or Guam law, immediate dismissal of the above-captioned case is appropriate on ripeness grounds alone," Aguon states.