

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE DISTRICT COURT OF GUAM

JON P. FERNANDEZ,

Plaintiff,

-vs-

GUAM EDUCATION BOARD,
LOURDES B. SAN NICOLAS,
individually and as the chairperson and a
member of the Guam Education Board,
ROSIE R. TAINATONGO, individually
and as the vice chairperson and a member of
the Guam Education Board, KENNETH P.
CHARGUALAF, individually and as a
member of the Guam Education Board,
JOSE Q. CRUZ, individually and as a
member of the Guam Education Board,
RYAN F. TORRES, individually and as a
member of the Guam Education Board,
CHARLENE D. CONCEPCION,
individually and as a member of the Guam
Education Board,,

Defendants.

CIVIL ACTION NO. 16-00080

**TEMPORARY RESTRAINING ORDER AND
ORDER SETTING HEARING**

Before the court is Plaintiff Jon P. Fernandez’s (“Fernandez”) Ex Parte Application for Temporary Restraining Order (“Application”) pursuant to Federal Rule of Civil Procedure (“FRCP”) 65(b). *See* ECF No. 2. FRCP 65(b) permits a court to “issue a temporary restraining order without written or oral notice to the adverse party or its attorney” when:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

1 (B) the movant's attorney certifies in writing any efforts made to give notice and
2 the reasons why it should not be required.

3 FRCP 65(b).

4 A hearing on the matter was set for 4:30 p.m. on November 18, 2016. Upon consideration
5 of the parties' arguments at the hearing, as well as Fernandez's Application, Verified Complaint,
6 and supporting documents, the court hereby finds that Fernandez will suffer injury to his
7 occupation and injury to his reputation and standing in the community if the temporary
8 restraining order is not issued. Such injury is irreparable as Fernandez will be further deprived of
9 liberty and property without due process of law. Furthermore, Fernandez's counsel certified in
10 writing the efforts made to give notice to Defendants and their counsel via email, and indicated
11 the difficulty in notifying all Defendants given the exigency if the hearing scheduled less than one
12 business day away. *See* ECF Nos. 3 and 4.

14 Accordingly, the court hereby orders that Defendants Guam Education Board, Lourdes B.
15 San Nicolas, Rosie R. Tainatongo, Kenneth P. Chargualaf, Jose Q. Cruz, Ryan F. Torres, and
16 Charlene D. Concepcion ("Defendants") shall be restrained and enjoined from holding the
17 meeting or hearing of the Guam Education Board which is currently scheduled for November 21,
18 2016, and from taking any action in furtherance of Fernandez's termination as Superintendent of
19 the Guam Department of Education.

21 This Order is issued without notice to all Defendants due to the exigency of the
22 circumstances, as the Board hearing or meeting is scheduled on November 21, 2016, and there is
23 insufficient time to provide notice to all seven Defendants. Counsel Gary Gumataotao's
24 argument challenging service is unavailing. FRCP 65(b) permits a Temporary Restraining Order
25 to issue without service on the parties. Additionally, no bond is required at this time as the court
26 finds the evidence presented at the hearing establishes the Guam Education Board's intent to
27 continue payment to Fernandez until this matter is resolved.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The temporary restraining order was entered orally on the record at 7:30 p.m. on November 18, 2016, and shall expire fourteen days after its entry on the record.¹

In accordance with FRCP 65(b)(3), a preliminary-injunction hearing is hereby set for December 3, 2016, at 1:30 p.m. A briefing order will follow.

SO ORDERED.



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Nov 19, 2016

¹ This temporary restraining order will expire at 7:30 p.m. on December 3, 2016.