



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

August 22, 2007

Suzy Arents
Trident Literacy Association
5416-B Rivers Avenue
North Charleston, SC 29406

Dear Ms. Arents:

Your email communication to the U.S. Department of Education regarding the responsibility of Trident Literacy Association to provide individualized education programs (IEPs) and special education services pursuant to those IEPs to children with disabilities enrolled in your program has been referred to the Department's Office of Special Education Programs (OSEP) for response. OSEP is the Office in the U.S. Department of Education that administers Part B of the Individuals with Disabilities Education Act (Part B). Under Part B, States and their public agencies, including local school districts, are required to make a free appropriate public education (FAPE) available to children with disabilities residing in the State in mandatory age ranges. 34 CFR §300.101(a). FAPE means special education and related services, provided at public expense, under public supervision and direction, at no cost to parents, and includes preschool, elementary school, or secondary school education in the State involved, provided in conformity with an IEP that meets the requirements of §§300.320 through 300.324. 34 CFR §300.17. The FAPE requirements of Part B apply to States and public agencies that are directly responsible for the education of children with disabilities in their State and do not apply to private entities.

It is OSEP's understanding that the Trident Literacy Association is a nonprofit, private entity serving adults in regions of South Carolina. According to the State Director of Special Education, Susan DuRant, Trident does not receive Part B funds, either from the State educational agency (SEA) or from the local educational agencies (LEAs) in the regions you serve. Additionally, it is OSEP's understanding that the students attending Trident, including students with disabilities, have withdrawn from the public school system and have chosen to enroll in your program in order to obtain literacy services. You have written to ask that OSEP confirm oral advice previously communicated to you during a telephone conversation that you had with Deborah Morrow of my staff that you have no responsibility to develop IEPs for these students under Part B.

Based on the information you have provided as well as information we have obtained from the South Carolina Department of Education, it is our conclusion that a private nonprofit entity such as Trident Literacy Association has no obligation to students with disabilities who have withdrawn from the public school program and seek literacy services directly from Trident. The Part B regulations in 34 CFR Part 300, including the IEP requirements in 34 CFR §§300.320-300.324, do not apply to the Trident Literacy Association. Accordingly, the Trident Literacy Association has no obligation under Part B to develop IEPs for students with disabilities who

have withdrawn from the public school program and seek literacy services directly from Trident. Our conclusion that Trident Literacy Association has no obligations under Part B to students with disabilities is not altered regardless of whether the students in question are entitled to special education and related services in accordance with an IEP if they were to seek those services directly from their local school district.

In your inquiry, you indicate that services provided to some of the students served by Trident Literacy Association may be paid for with IDEA funds. There is nothing in Part B that would prohibit a school district from contracting with Trident Literacy Association to utilize the services offered at Trident to implement the IEPs that the district has developed for students with disabilities enrolled in programs in those districts or to utilize Part B funds for this purpose. School districts that elect to enter into such contractual or other arrangements with private entities such as Trident Literacy Association remain responsible for developing the student's IEPs and ensuring that those IEPs are appropriately implemented.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We hope this clarification is helpful to you. If you have further questions regarding this matter, please contact Deborah Morrow, of my staff, at 202-245-7456.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Susan DuRant