DIANE D. MICHAEL,

Grievant,

v. **Docket No. 00-HE-314**

HIGHER EDUCATION INTERIM GOVERNING BOARD/

WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Grievant, Diane D. Michael, employed by West Virginia University (WVU or Respondent) as a Research Instructor, requested an informal conference with her supervisor by memorandum dated July 14, 2000, to begin the grievance procedure. Grievant challenges the denial of tuition waiver requests for Fall 1999 and Summer 2000, and asserts that Respondent failed to provide her with a waiver request form for Spring 2000. She requests reimbursement for six hours tuition for the Fall 1999, Spring and Summer 2000, semesters for a total of eighteen hours, plus interest. The grievance was not resolved during the informal conference, and was subsequently denied at levels one and two. Grievant elected to bypass level three, and advanced her claim to level four on September 25, 2000. Grievant, acted pro se, and Respondent, represented by Assistant Attorney General Samuel R. Spatafore, agreed to submit the matter for decision based upon the lower level record, supplemented with proposed findings of fact and conclusions of law. The grievance became mature for decision on June 5, 2001, the final due date for submissions.

The following facts are undisputed and may be set forth as formal findings of fact.

Findings of Fact

1. Grievant was first employed by Respondent in October 1993 as a Research Instructor assigned to the University Affiliated Center for Developmental Disabilities(UACDD). Grievant specifically worked with the Early Intervention Program, a special education program administered the by Department of Health and Human Resources (DHHR). Her position was classified as temporary, non-tenured faculty, with an annual employment contract.

2. Beginning in 1996, Grievant regularly requested, and received, tuition waivers which allowed her to complete a Masters degree, and begin doctoral work in Educational Leadership Studies.

3. Grievant's request for tuition waiver was denied for the Fall 1999 semester. Grievant did not file a grievance at that time.

4. Grievant did not request a tuition waiver for the Spring 2000 semester.

5. Grievant's request for a tuition waiver for the first Summer 2000 semester was denied.

6. Respondent and DHHR were engaged in negotiations during the second half of 1999 regarding the grant which funded Grievant's position. By December 1999, it had been determined that DHHR would not continue the contract with Respondent for the Early Intervention Program.

7. Michael J. McNicholas, Manager, Financial & General Operations at UACDD, issued a memorandum dated March 23, 2000, advising all faculty, staff, and graduate students that quota waiver requests for Summer 2000 were due in his office by March 29, 2000.

8. Grievant filed a tuition waiver request dated June 2, 2000, for Summer 2000.

9. Grievant received notice on June 23, 2000, that her application for Summer 2000 had been denied. 10. Grievant's employment at WVU ended on June 30, 2000.

11. Grievant initiated these proceedings on July 14, 2000.

Discussion

Respondent argues that the issues arising from Fall 1999 and Spring 2000 were not timely filed, and that Grievant's Summer 2000 claim was properly denied within the Director's discretion, as provided by policy. Grievant's claim is unclear, but generally appears to be that Respondent failed to comply with its tuition waiver policy by not providing her with applications, and in denying the waivers.

Although Respondent did not raise the issue, Grievant was not eligible when she filed this grievance in July 2000 to participate in the statutory grievance procedure. Certainly, Grievant could have filed under this procedure while still an employee at WVU. W. Va. Code §18-29-1 states, in pertinent part:

The purpose of this article is to provide a procedure for employees of the governing boards of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers and their employer or agents of the employer to reach solutions to problems which arise between them within the scope of their respective employment relationships to the end that good morale may be maintained, effective job performance may be enhanced and the citizens of the community may be better served.

Further, the nature of the complaint falls within the definition of "grievance," stated in W. Va. Code §18-29-2(a) as:

any claim by one or more affected employees of the governing boards of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers alleging a violation, a misapplication or a misinterpretation of the statutes, policies,rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of the board; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective classroom instruction, job performance or the health and safety of students or employees.

Finally, Grievant was an "employee," defined in Section (c) of that provision to be "any person hired as a temporary, probationary or permanent employee by an institution either full or part time."

Undeniably, Grievant could have properly initiated these proceedings prior to the termination of her employment on June 30, 2000. However, Grievant was just as clearly not in Respondent's employ on July 14, 2001, when she requested an informal meeting with her former supervisor to begin the grievance process. Grievant concedes that she did not file a grievance upon learning that her tuition request had been denied for Fall 1999, at the beginning of the Spring 2000 semester, or after her last request was denied on June 23, 2000, but explained that she specifically waited until her employment had expired to file based upon a concern that Respondent would engage in retaliation. Unfortunately, this course of action left Grievant ineligible to file a grievance under the statutory grievance procedure. Jackson v. Div. of Corrections and Div. of Personnel, Docket No. 97-CORR- 345 (Jan. 30, 1998).

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following conclusions of law.

Conclusions of Law

1. A grievance procedure for education employees, including employees of governing boards of institutions of higher learning was legislatively created in 1985, and is set forth in W. Va. Code §§

18-29-1, et seq.

2. Grievant was not an employee of Respondent on July 14, 2000, and was not eligible to file a grievance under the provisions of W. Va. Code §§ 18-29-1, et seq.

Accordingly, the grievance is **DISMISSED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: July10, 2001 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE