TAMMY M. MONTELIONE,

Grievant,

v. **Docket No. 98-RESA-368**

RESA VI,

Respondent.

D E C I S I O N

___Grievant, Tammy M. Montelione, employed by RESA VI (Respondent) as an interpreter/aide, filed a level one grievance on or about July 16, 1998, after her employment was not renewed for the 1998-99 school year. David Phillips, Coordinator of Special Education Programs, advised Grievant that the matter could not be resolved at that level. A decision denying the claim was issued following an evidentiary hearing at level two, and RESA waived consideration of the matter at level three, as is permitted by W. Va. Code §18-29-4(c). Appeal to level four was made on September 22, 1998. Following a series of continuances, a hearing was conducted on February 25, 1999. Grievant did not appear but was represented by her spouse and Lawrence Manypenny, Esq. RESA was represented by Claudia W. Bentley, Esq. The grievance became mature for decision on April 22, 1999, with the submission of a response by RESA to Grievant's proposed findings of fact and conclusions of law.

The following findings of fact are made based upon a review of the record in its entirety, including the level two transcript and exhibits, and the evidence submitted at level four.

Findings of Fact

1. Grievant has been employed by RESA as an interpreter/aide since 1991. As with all employees of RESA, Grievant was employed with one year contracts, with no renewal or continuing contract rights.

2. During the 1997-98 school year, Grievant was assigned to provide interpreter services to S.G., a seventeen year old special education student with multiple disabilities, including a hearing impairment. (See footnote 1)

3. During the 1997-98 school year, S.G. attended Weir Middle School in Hancock County. Pursuant to provisions of the Individuals with Disabilities Education Act (IDEA), S.G. was provided special education and related services in order that she could be educated with nondisabled students

to the maximum extent possible, both in the classroom and in the general curriculum.

4. RESA is a regional educational service agency which employs interpreters for the hearing impaired, and assigns the interpreters to work with students in the member counties.

5. S.G.'s educational programing is governed by an Individualized Education Program (IEP), which is developed by a team of professional educators and others, including the parents.

6. S.G.'s IEP team concluded that she should attend Weir High School for the 1998-99 school year. This decision was based in part on concerns that S.G. needed greater socialization and interaction with other students. 7. Prior to the conclusion of the 1997-98 school year, S.G.'s mother expressed concern to David Phillips, RESA VI Coordinator of Special Education Services, regarding Grievant continuing as S.G.'s interpreter for the upcoming school year.

8. On June 1, 1998, at Mr. Phillips' request, S.G.'s mother formally requested that an individual other than Grievant be assigned as an interpreter for her daughter for the 1998-99 school year. The parent did not state any reasons for her request at that time.

9. In response to a request that she provide reasons for the change in personnel, the parent advised Mr. Phillips that she believed her daughter was not receiving appropriate services due to Grievant's personal medical problems. Specifically, she stated that Grievant's own hearing impairment had hindered S.G.'s education. As an example, she recalled that S.G. was denied access to a computer program which had voice commands which Grievant could not interpret because she could not hear the computer. She also noted that Grievant was not able to swim with S.G., because of Grievant's hearing aids, and was not permitted to lift more than ten pounds (S.G. weighs more than fifty pounds).

10. Stanley C. Stewart, Executive Director of RESA VI, advised Grievant by letter dated June 17, 1998, that the Board of Directors had agreed to honor a request by S.G.'s mother to assign a new hearing interpreter/aide for her daughter, effective the 1998-99 school year, and that Grievant would not be offered a contract of employment for the upcoming school year.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-

130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

In the present matter, Grievant argues that Respondent misinterpreted a parent's right to choose an interpreter for his or her child, and erred in assigning another interpreter based upon the request of only one parent. Grievant also asserts that as a disabled individual she is entitled to the protection against discriminatory practices afforded by various federal and state provisions, and that Respondent's failure to properly evaluate whether she was a qualified interpreter for S.G. was discriminatory. Grievant asserts that she is a qualified interpreter, and offered testimony from a number of individuals at level four indicating that her performance had previously been evaluated as satisfactory.

RESA VI responds that based upon the parent's request, and independent research which concluded that the preference of the parent, or the client, was to be given primary consideration in the choice of an interpreter, Grievant's contract expired, by its own terms, at the end of the 1997-98 school year. RESA VI asserts that absent the parent's request, Grievant would have been offered a full time contract for the 1998-99 school year, and she is currently employed by Respondent as a substitute sign language specialist.

Grievant's distress in not having her contract renewed for the 1998-99 school year is understandable. However, as an employee of a regional educational service agency,Grievant does not enjoy continuing contract status, or tenure, as do employees of boards of education. See St. Clair v. RESA-V, Docket No. RESA-88-186 (April 27, 1990). RESAs are permitted to retain their employees through annual contracts, based upon need and funding. Consistent with that approach, Grievant was most recently employed for the period of July 1, 1997 through June 30, 1998. By virtue of this employment contract, Grievant has no legal entitlement to employment in the 1998-99 school year.

Although she had no entitlement to continued employment, Grievant did have an expectation that she would remain employed. Respondent appears to concur that Grievant would have continued in her assignment with S.G. but for the parent's request for another interpreter. Nevertheless, Respondent's decision to honor the parent's request has not been proven improper. On the contrary, Mr. Stewart and Mr. Phillips testified that they had consulted with the State Commission for the Deaf and Hard of Hearing and the National Association for the Deaf regarding this matter. Both agencies advised Respondent that under the provisions of the Americans with Disabilities Act (ADA), the client

has the primary consideration in the choice of an interpreter.

In the present matter, the evidence establishes that Respondent's decision to not renew Grievant's contract was made in compliance with ADA provisions giving the client primary consideration in the choice of an interpreter. Respondent does not question whether Grievant is a qualified interpreter, and continues to assign her as a substitute employee. In any event, Grievant's employment contract expired by its own terms, and, absent an available assignment, Respondent had no obligation, or need, to retain her services. In addition to the foregoing findings of fact and discussion it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

2. Grievant did not prove by a preponderance of the evidence any violation, misapplication, or misinterpretation of any statutes, policies, rules, regulations or written agreements under which she worked.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock County. Any 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: April 30, 1999 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Consistent with Grievance Board practice, the student will be identified only by her initials.