

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

**BERNICE ARTIS,**

**Appellant,**

v.

**WARREN COUNTY  
BOARD OF EDUCATION,**

**Appellee.**

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**CASE NO. 1989-28**

**DECISION**

**PART I**

**SUMMARY**

This is an appeal by Bernice Artis (“Appellant”) from a decision by the Warren County Board of Education (“Local Board”) to uphold the Local Superintendent’s decision to refuse Appellant a teaching position when she returned from maternity leave at the beginning of the 1988-1989 school year, and not to give Appellant credit for the 1988-1989 school year when he determined the salaries for the 1989-1990 school year. Appellant maintains that the Local Superintendent’s action and the Local Board’s decision violate the maternity leave statute, § 20-2-852. The decision of the Local Board is reversed.

**PART II**

**FACTUAL BACKGROUND**

Appellant was absent from school due to complications from a pregnancy from approximately August 23, 1988, through October 11, 1988. When she informed the principal that she was ready to return to work, she was told that a position was no longer available to her. In February, 1989, Appellant was reinstated in her old position because the teacher who was hired in her place could not obtain certification. When her contract for the 1989-1990 school year was presented to her, the Warren County School System had not given her any credit for the 1988-1989 school year, which apparently resulted in a lower salary due to step increases. Appellant requested a hearing in order to obtain pay for the October, 1988 through February, 1989 period, and to obtain an adjustment in her 1989-1990 salary.

The Local Board conducted a hearing on July 27, 1989. During the hearing, testimony was presented by the Local Superintendent, Appellant's principal, the director of instruction, and Appellant.

Appellant is a science teacher with seventeen years of experience. She began working for the Local Board at the beginning of the 1987-1988 school year. During the 1987-1988 school year, she became pregnant with her second child. Her anticipated delivery date was September 15, 1988, after the beginning of the 1988-1989 school year. Appellant did not provide any notice to the school system that she was pregnant. During the first week of June, 1988, during post-planning, her principal asked her if she was pregnant. Appellant acknowledged that she was.

Appellant claims that she also informed the principal that she would be absent from school during the period September 15, 1988 through October 11, 1988. The principal testified that Appellant did not tell him she would be absent from school, but, instead, she said she would not have any problems with returning to work in the fall. The principal testified that he told Appellant to put a request in writing if she needed any maternity leave. Appellant denied that the principal told her to request maternity leave in writing.

The Local Board had a maternity leave policy that stated:

In the event of pregnancy, the teacher will report the condition to her principal in writing at least two calendar months prior to her absence in order that appropriate plans may be made during her absence. ...

Appellant did not comply with this policy. She said she was unaware of it, and there was no mention of it in the teachers' handbook. The handbook, however, stated that the Local Board policies handbook had been revised and that teachers should become familiar with the policies by reviewing a copy that was kept in the library.

On August 16, 1989, upon the advice of her doctor, Appellant telephoned the school and told the director of instruction that she would be unable to return to school when pre-planning began because of complications with her pregnancy. She also said she would be unable to return until the middle of October. The director of instruction informed the Local Superintendent of the conversation. The Local Superintendent felt that a replacement science teacher had to be hired because Appellant's class was too important to go unattended from the beginning of the school year. The Local Superintendent instructed the principal to write a letter to Appellant to tell her what was planned.

The principal wrote a letter to Appellant on August 23, 1988. In the letter, the principal said:

The importance and gravity of a course like Science is of such magnitude that we can not [sic] allow our students to be taught by a substitute teacher. We are in pursuit of a certified science teacher to begin the school year. If we are successful in securing a science teacher it will be on permanent basis. This does not mean that you have been terminated. The fact that you are under contract means that we will offer a certified position to you upon your return to Warren County High, however, that position will not

be the one you held previously.

A copy of the letter was sent to the Superintendent.

Shortly before October 11, 1988, Appellant called her principal to inform him that she was ready to return to work on October 11, 1988. The principal informed her that a position was not available, and that she would not be paid while she was out of school. Appellant then applied for and was granted workmen's' compensation benefits.

The teacher hired to replace Appellant was unable to obtain certification. Appellant was then reinstated in her old position under her previous contract on February 14, 1989. She subsequently signed a contract for the 1989-1990 school year, but the contract credited her with the same years of service as the contract for the previous year.

Immediately after learning that she would not be reinstated on October 11, 1988, Appellant registered a complaint, through counsel, with the Local Superintendent. She also registered complaints concerning her pay during the period October 11, 1988 through February 14, 1989, and about her 1989-1990 contract. She finally requested a hearing to obtain: (1) payment for the period October 11, 1988 through February 14, 1989; (2) contributions to the retirement plan during the same period, and (3) credit for the 1988-1989 school year for the purpose of computing her 1989-1990 salary and retirement contributions.

The Local Board issued its decision on August 1, 1989. The Local Board decided that the Local Superintendent was correct in not paying Appellant during the October 11, 1988 through February 14, 1989 period, and in not giving her credit for the 1988-1989 school year in determining her 1989-1990 salary. This appeal was then filed on August 21, 1989.

### **PART III**

### **DISCUSSION**

On appeal, Appellant contends that the Local Superintendent and the Local Board violated the provisions of O.C.G.A. § 20-2-852 by not providing her a position when she was ready to return to work on October 11, 1988. The Local Board maintains that Appellant did not request maternity leave in writing and it was not granted. Instead, Appellant was granted long-term disability leave. As a result, the Local Board contends that the actions of the Local Superintendent were proper.

O.C.G.A. § 20-2-852 provides, in part, that:

A leave of absence for maternity reasons shall be granted to a female employed by a public school system ...as follows:

- (1) Any such employee who is pregnant shall be entitled to a leave of absence

to begin at a time to be determined by the employee, the physician, and the local school superintendent between the commencement of pregnancy and the anticipated date of delivery. The employee shall notify the superintendent in writing of her desire to take such leave and, except in case of emergency, shall give such notice at least 60 calendar days prior to the date on which her leave is to begin. This notice shall include a doctor's statement of anticipated date of physical disability....

(2) An employee who has been granted leave for the period of physical disability only shall be entitled to return to active employment upon presentation of a doctor's statement of physical ability to perform the required functions of the job and shall be assigned to a substantially equivalent position to be approved by the superintendent. An employee who has been granted leave for a period longer than the period of physical disability, but not to exceed one full school year, shall be entitled to return to active employment upon written request for reassignment and contingent on a vacancy for which the employee is qualified. Such employee shall be given preference equal to any other applicant returning from a period of physical disability for a vacancy for which she is qualified. In any instance, the employee's return to active employment may be delayed until the beginning of a quarter, or semester, in order to maintain continuity of classroom instruction....

The statute requires a teacher to provide (1) written notice to the superintendent (2) at least 60 days before the anticipated disability, and (3) a doctor's statement of the anticipated date of disability. The 60-day requirement is not applicable in the event of an emergency.

Appellant maintains that O.C.G.A. § 20-2-852 provides one method of granting maternity leave, but it does not prohibit other methods. She points to the Local Board's policy that provides for notice to be given to the principal. She claims that both her principal and the Local Superintendent were aware of her condition so written notice was unnecessary; she was unaware written notice was necessary and was never informed it was needed, and her condition deteriorated to an emergency situation that does not require written notice under the statute. Additionally, Appellant claims that the August 23, 1988, letter from the principal granted her both leave and the right to reinstatement when she was ready to return to work.

The Local Board argues that both the statute and its own policy require a written notice; in the absence of a written notice, a maternity leave cannot be granted. The Local Board also contends that Appellant, with sixteen years' experience, should have been aware that written notice was required, and she should have familiarized herself with the Local Board policies that were available. Additionally, the Local Board contends that the principal's letter did not grant maternity leave and the principal erred in saying that Appellant would be reinstated when she returned.

Appellant claims that the Local Board should be estopped from requiring a written notice because she relied upon the letter from the principal, which promised her a position when she was able to return. Appellant's position, however, overlooks the fact that written notice is required to be given 60 days in advance of the delivery date. Appellant, therefore, should have given written notice no later than July 15, 1988. The principal's letter was written one month

after Appellant should have given her notice. She cannot, therefore, say that she failed to give written notice because she relied upon the principal's letter. The Local Board, therefore, cannot be estopped from requiring written notice because Appellant did not rely upon the principal's letter.

Appellant then argues that O.C.G.A. § 20-2-852 does not require written notice in the event of an emergency. Appellant, however, overlooks the fact that her emergency did not arise until after the date she was supposed to have given notice. The statute's clause "except in case of an emergency" modifies "60 calendar days". The requirement for a written notice and a physician's statement are not eliminated in an emergency. Appellant, therefore, cannot rely upon her emergency to avoid the written notice requirement.

The next question is whether the requirement for a written notice is mandatory in order to grant maternity leave, or merely directive to insure that notice has been given. The evident purpose of O.C.G.A. § 20-2-852 is to insure that female employees are treated the same as male employees, and that the birth of a child is treated the same as any other physical disability encountered by any other employee. It is in the nature of a remedial statute and, therefore, should be liberally construed.

We interpret O.C.G.A. § 20-2-852 to be procedural in nature in order to provide some evidence that notice has been given. Substantial compliance with the notice requirement will permit a teacher to obtain maternity leave if there has not been any detriment to the school system.

In the instant case, there is no question that both the principal and the Local Superintendent had actual knowledge that Appellant was pregnant; both the principal and the Local Superintendent knew that Appellant developed complications from her pregnancy, and both the principal and the Local Superintendent knew that Appellant planned to return to work on October 15, 1988. Thus, even though Appellant did not give written notice, the administration was aware of the situation, which is the same result obtained when written notice is given. In most instances, especially in large school systems, a written notice may be a substantive requirement in order to prove that notice has been given because principals cannot be expected to remember all the conversations they have with teachers and take action on those conversations. Thus, their admonition to "put it in writing" may be a practical necessity in order to place a process in motion to obtain substitutes and arrange for the absence.

In the instant case, however, there is no question that the principal and superintendent were aware of Appellant's pregnancy. The only benefit the written notice would have provided would have been to let the administration know the anticipated dates that Appellant expected to be absent from school. The principal testified that he did not know when Appellant's delivery date and whether she would miss any school. As a result, the school system was unprepared for the need to obtain a substitute. The principal's testimony is buttressed by the fact that he apparently had not taken steps to obtain a substitute. He testified that he asked, "Do you anticipate any problem with being able to return to work next year?"

She replied, "No."

From this exchange, and the principal's failure to seek a substitute, the Local Board could find that the principal expected Appellant to have her baby during the summer months and return full-time when school began. Such a finding, however, does not answer the ultimate question of whether Appellant was granted maternity leave; it only points out why written notice is the best course of action.

When the principal wrote the August 23, 1988, letter, he told Appellant that the school system would follow the requirements of O.C.G.A. § 20-2-852 and offer her a position at the end of her disability. The Local Board argues that the principal's offer was made in error and it was not made by the Local Superintendent. The principal's statement was made in error only if there was an intent not to grant Appellant maternity leave and to place her on long-term disability leave. The Local Superintendent, however, was aware of the letter and did not take any action to issue a correction. His failure to take action constitutes acquiescence and approval of the letter. We, therefore, conclude that Appellant was placed on maternity leave as a result of the August 23, 1988, letter from the principal.

Because Appellant was placed on maternity leave, she had a right to be reinstated at the end of her disability. The Local Superintendent acted contrary to law when he failed to provide her a position on October 11, 1988.

#### **PART IV**

#### **DECISION**

Based upon the foregoing, we are of the opinion that Appellant was placed on maternity leave and had the right to be reinstated on October 11, 1988, at the end of her disability. The decision of the Local Board, therefore, is REVERSED--by unanimous vote of the Board. Mr. Carrell abstained.

This 4th day of December, 1989.

John M. Taylor  
Vice Chairman Appeals