

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

CARLOS CROSBY,	:	
	:	
Appellant,	:	
	:	CASE NO 1991-32
vs.	:	
	:	DECISION
APPLING COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Carlos Crosby (“Appellant”) from a decision by the Appling County Board of Education (“Local Board”) to terminate his teaching contract because it found that he had been intoxicated while at school. Appellant claims that the evidence does not support the Local Board’s decision. The Local Board’s decision is sustained.

On September 3, 1991, Appellant went to school with a bad cold. He was teaching the fifth grade and intended to leave at noon to go to the doctor. His aide, however, had to leave at 10:00 a.m. because her child was sick and Appellant decided to remain at school the remainder of the day. While there, he used Listerine and Choloroseptic Spray and drank Nyquil. He was also taking two prescription drugs.

At 2:55 p.m., a teacher went to the door of Appellant’s classroom to see how he was doing. The teacher remained for only a short time, but Appellant did not appear to be intoxicated. He, however, merely gave yes or no responses to her questions and did not otherwise carry on a conversation. Another teacher arrived at 3:00 p.m. and stood at Appellant’s desk. They talked about Appellant’s cold and sore throat. The teacher observed a bottle of Listerine on Appellant’s desk. The teacher told Appellant that he should see a doctor. The two engaged in a five-minute conversation and the teacher testified that there was nothing to indicate that Appellant was under the influence of alcohol.

The bell dismissing the teachers rang at 3:10 p.m. The principal of the school was standing outside the school and the buses were lining up to pick up the students. The principal heard a crash and observed Appellant maneuvering away from the back of a bus. The bus driver testified that she observed Appellant back into the rear bumper of her bus. Appellant testified that when he backed up, his left door grazed the rear bumper of the bus. He could see that there was no damage and he drove off.

At 3:33 p.m., a deputy sheriff received a call to be on the lookout for a maroon car that was running people off the road. The deputy, who was in Baxley, Georgia, which is

approximately 15 miles from the school, started driving on the highway towards the school. When he reached the city limits, he observed Appellant's car strike the right shoulder of the highway and then pull out and cross the center lane. The deputy maneuvered around Appellant's car and stopped Appellant at 3:36 p.m. Appellant was weaving when he walked, his speech was slurred and he had difficulty finding his drivers license and insurance card. Appellant informed the deputy that he had not been drinking, but was taking a mouthwash for a sore throat. Appellant testified that he consumed a half bottle of NyQuil after leaving the school, but the deputy testified that there was no NyQuil bottle in the car.

The deputy took Appellant to the jail. On the way to the jail, Appellant urinated in the deputy's car. Another deputy administered a breathalyzer test on Appellant at 3:58 p.m. The test showed that Appellant had .28 grams of alcohol in his system. Appellant was released from the jail before the following morning.

The Local Board found that Appellant had been intoxicated while on campus and terminated his teaching contract. Appellant contends there was no evidence to show he was intoxicated while on the school campus. He claims he was unaware that NyQuil had a 25% alcohol content, and he consumed a half bottle between the time he left the school and the time the deputy sheriff stopped him. He also claimed that his car weaved on the road when he attempted to retrieve two school books that fell from the seat to the floorboard.

The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *Ransom v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783 (1978); *Ant one v. Greene County Bd. of Educ.*, Case No. 197 6-11 (St. Bd. of Ed., 1976).

There was no direct evidence that Appellant was intoxicated while on campus. Each of the witnesses who observed Appellant shortly before he left school testified that he did not appear to be intoxicated. The circumstantial evidence was that Appellant backed into a school bus while leaving the school, was observed approximately 25 minutes later driving erratically and in an apparent intoxicated condition, and registered a .28 on the Breathalyzer test approximately 45 minutes after leaving the campus. Could the Local Board find that Appellant was intoxicated based upon this circumstantial evidence? Taken together, we think that there was some evidence available to the Local Board from which it could conclude that Appellant was intoxicated while on the campus. Although Appellant claimed that the only thing he was drinking was NyQuil, which has a 25% alcohol content, the Local Board could conclude that Appellant would not have registered as high as he did on the Breathalyzer test from drinking a bottle of NyQuil.

Based upon the above and the briefs submitted, the State Board of Education is of the opinion that the Local Board's decision was supported by some evidence. The Local Board's decision, therefore, is hereby

SUSTAINED.

This day of March, 1992.

Mr. Brinson was absent.

'Vice Chairman for Appeals