



STATE OF NEW JERSEY

In the Matter of Yolanda Curtis  
 Department of Children and Families  
  
 CSC DKT. NO. 2016-4028  
 OAL DKT. NO. CSV 8037-16

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DECISION OF THE  
 CIVIL SERVICE COMMISSION

ISSUED: MAY 4, 2018          BW

The appeal of Yolanda Curtis, Assistant Family Service Worker 2, Department of Children and Families, 120 working day suspension, on charges, was heard by Administrative Law Judge Jeff S. Masin, who rendered his initial decision on February 15, 2018 reversing the 120 working day suspension. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the Administrative Law Judge’s initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on May 2, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge’s initial decision.

Since the penalty has been reversed, the appellant is entitled to 120 days of back pay, benefits, and seniority, pursuant to *N.J.A.C.* 4A:2-2.10. Further, since the appellant has prevailed, she is entitled to counsel fees pursuant to *N.J.A.C.* 4A:2-2.12.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division’s decision, *Dolores Phillips v. Department of Children and Families*, Docket No. A-5581-01T2F (App. Div. Feb. 26,

2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Yolanda Curtis. The Commission further orders that appellant be granted 120 days back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay or counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 2<sup>ND</sup> DAY OF MAY, 2018



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
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attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**IN THE MATTER OF YOLANDA  
CURTIS, DEPARTMENT OF CHILDREN  
AND FAMILIES.**

OAL DKT. NO. CSV 8037-16  
AGENCY DKT. NO. 2016-4028

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**William A. Nash, Esq.**, for appellant Yolanda Curtis (The Nash Law Firm,  
attorneys)

**Jamie Valentine**, Employee Relations Coordinator, for respondent Department  
of Children and Families, pursuant to N.J.A.C 1:1-5.4(a)2

Record Closed: January 22, 2018

Decided: February 15, 2018

BEFORE **JEFF S. MASIN**, ALJ t/a:

The Department of Families and Children (DCF) employed Yolanda Curtis as an Assistant Family Service Worker 2 at its Gloucester West Local Office. On April 26, 2016, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) suspending Ms. Curtis for 120 days based on findings that she had violated several provisions of the Administrative Code, specifically, N.J.A.C. 4A:2-2.3(a)1, incompetency, inefficiency or failure to perform duties; (a)6, conduct unbecoming a public employee; (a)8, misuse of public property, including motor vehicles; and (a)12,

other sufficient cause-violation of policy.<sup>1</sup> Ms. Curtis filed an appeal with the Civil Service Commission, which transferred the contested case to the Office of Administrative Law. The assigned administrative law judge held several status and settlement conferences, and scheduled the plenary hearing for January 22, 2018. However, as the judge left the OAL just prior to that date, the case was reassigned to this judge on January 17, 2018, and was heard on January 22, 2018. The record closed that day following testimony and closing statements by counsel and the agency's non-attorney representative.

The Specification of Charges that was set forth in the Preliminary Notice of Disciplinary Action (PNDA) explained that on August 12, 2015, Ms. Curtis was assigned to transport children under the supervision of DCF to a supervised visit with their mother at the local office and to return them to their grandmother's house where they resided. On the return from the visit, "you were almost in an accident with another vehicle." The Specification notes that the Office of the Public Defender Conflict Unit conducted an investigation as to whether Ms. Curtis had engaged in conduct either abusive or neglectful of these children and had concluded that the allegation of either abuse or neglect was "not established." However, the investigation did conclude that Ms. Curtis had placed the children at "substantial risk of harm." The Specification continues, "You admitted to slamming on your brakes. The children sustained injuries." The children were upset by the incident but "you failed to appropriately assess their need for medical treatment and safety" in violation of the expectation that as an assistant family service worker, she would "ensure the safety and well-being of the children in your care while conducting transports in the community. You failed to perform your duties and your actions placed the children at substantial risk of harm."

Amanda Rose Hammond-Jakubowicz, the local office manager for the Gloucester West office, testified that at the time of the incident in question, she was not Ms. Curtis' direct supervisor, although she had supervised her in the past. She

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<sup>1</sup>The Charges section of the PNDA did not specify which particular polic(ies) were supposedly violated. The Specification refers generally to the mission of DCF to protect its charges. It also refers to the need for Curtis to know or "should have known" the agency's "established policies, practices and procedures to be followed." The FNDA also does not identify exactly which policies Curtis supposedly violated.

explained the duties of an assistant family service worker, including the supervision of parental visits and transportation of children to and from such visits. She identified the Job Specification for the position and also policies, such as those for seat belt use and regarding the use of State vehicles. Ms. Hammond-Jakubowicz became aware of the incident in question on August 12, 2015, when she was notified by telephone of a "near accident." The investigation began after the children's grandmother referred the matter. The Public Defender's Office Conflict Unit was involved as the investigation involved the actions of a DCF employee. Ultimately, the witness learned that the investigation led to a finding that allegations of abuse or neglect by Ms. Curtis were "not established." Agency-level disciplinary action was then instituted.

The witness identified the DCF Policy Manual provision addressing "Use of State Vehicles." (R-3). This provides that employees are prohibited from using wireless devices, including hands-free devices, while operating a State vehicle. This includes cell phones and GPS devices. As for the use of such directional devices, the policy provides that they are to be utilized "prior to driving" and the operator may "listen to it as they drive. If there is a need to re-program the device, the driver is required to pull over and stop driving to do so."

Ms. Hammond-Jakubowicz did not know if the vehicle's "black box" had been examined after the near accident, and stated that there was no report of any bodily damage to the vehicle. Vehicles are inspected before the car is driven. The witness acknowledged that an employee operating a vehicle is to avoid an accident if that is possible.

Roger Broyles, now retired but previously a principal investigator with the Public Defender's Office Conflict Unit, and prior to that position a police officer for twenty-six years, was assigned to investigate Ms. Curtis' conduct in regard to the near accident. He interviewed the children's grandmother, R. It was her daughter that the children met with that day and from which visit they were returning. The children, ages sixteen, eleven and seven, were removed from their mother's custody in May of 2015. The

grandmother had custody of the two youngest and the older boy, J.G., was residing at a State residential setting due to his behavior.

On August 12, Ms. Curtis first picked up the sixteen-year-old, J.G., and then the two younger children, the seven-year-old, A.S., and the eleven-year-old, D.K. She took all three to the Gloucester West Local Office for the visit. When the vehicle arrived back at the grandmother's home, J.G. jumped out of the car and was yelling and screaming. He said that they had been involved in an accident and that Curtis had left the scene of the accident. He was holding A.S., the seven-year-old, and said that she was injured. He went into the house and placed the girl on a couch. The grandmother called the police and an ambulance. These arrived shortly after the call. The police observed no damage to the State vehicle. The seven-year-old was transported to the hospital, complaining of a bump on her forehead above her left eye, and pain in her stomach area. The grandmother took the two older children to the hospital herself.

Broyles interviewed the children on August 13. According to A.S., they were in a seven-passenger van. She was seated directly behind Curtis, who was driving. She had her seat belt on, and told Broyles, as reflected in his report, that she had put it on herself and "put it extra tight." A vehicle made an abrupt left turn in front of Curtis and she slammed on the brakes. A.S. first said that the vehicles came in contact, but then said that there was no contact. She said that her forehead hit the back of the seat in which Curtis was sitting. Her stomach hurt and she started to cry. Curtis told her to "shut up, you're not hurt, you'll be fine." She also said that they would be home in a few minutes. A.S. did have a bump above her left eye. There was no bruising in the stomach area. The girl recalled that at the house her older brother brought her in and put her on the couch.

A.S. claimed that before the other vehicle turned into the path of their vehicle, Ms. Curtis had been looking down at a GPS on her cell phone. She thought that it was in the ashtray.

D.K., the eleven-year-old, also claimed that he saw Curtis look down at her cell phone just before the near accident. He was seated in the back row, to the right of and

next to J.G., who was seated directly behind A.S. D.K. felt that the vehicles made contact and he felt a "little dizzy." He did not recall much after that.

J.G. was interviewed at Ranch Hope in Alloways Township, the residential setting where he lived. He claimed that Curtis had changed her route from that she had previously used when she had transported the children on other occasions. He did not understand why she got off at Exit 14 rather than at Exit 13. According to J.G., he observed that the vehicle was travelling at 45 miles per hour in a 35-mile-per-hour-zone. He too claimed that Curtis looked down at the GPS just before the other vehicle turned in front of them. According to Broyles' report, J.G. told him that Curtis sideswiped the other vehicle after slamming on her brakes. As recorded by Broyles, J.G. said it was not a solid hit, but her vehicle did make contact with the rear of the other car. The other vehicle then sped up and went into the parking lot into which it had been turning. Curtis came to a complete stop, briefly looked to her right at the other car, and then continued on down the road. The witness testified the boy said she stopped for thirty seconds, although that figure does not appear in his report.

J.G. told Broyles that after the accident, his sister was crying because she was injured. He unbuckled her and lifted her over the seat into his seat and cradled her. The report states that J.G. explained that although he did not hit the seat in front of him because "he was wearing his seatbelt," he had some discomfort to the right of his collar bone.

J.G. told Broyles that after the accident, Curtis missed a turn. He wanted to get out and told her to stop and let them out, but she continued on, telling them that they "will be fine and they were almost home." When they got to his grandmother's house, he jumped out with his sister and took her inside and put her on a couch. Curtis drove off.

The investigator interviewed Yolanda Curtis on August 14. She explained that the visit with the children's mother was cut short because the eleven-year-old had football practice. They left the local office at about 4:50 p.m. Prior to leaving she made sure that



all the children were wearing their seat belts. The girl had outgrown the booster seat. He asked Curtis about the GPS and she said that she had no need to be distracted by it. She had programmed it before she left and it had audio. As for the "accident", she explained that as she was driving she observed a vehicle coming in the other direction which then made a sudden left turn in front of her and she had to slam on the brakes. There was no contact, although it was a close call. She saw that the other driver did not get out of the vehicle after it went into the parking lot where it was headed, and after thirty seconds she departed. All of the children said that they were okay, and said that "we almost got into an accident." After this, they had to travel .7 (seven-tenths) miles to the grandmother's house from the scene of the near collision. She did hear the little girl whimper or moan, and she told the children that they would be at their grandmother's house in one minute. According to Broyles, Curtis told him that she only heard this whimpering after the girl had been removed from her seat by her brother. In her interview, she told Broyles that when she heard the whimpering, she told them that they would be home in a minute, J.G. said, "Fuck that, let me out of this car. My sister is crying." He then began to punch the back panel or back of the seat, took off his seatbelt and lifted his sister over her seat and consoled her. At that point she did hear A.S. crying. Curtis explained that she was not about to stop the vehicle in the middle of the street to let anyone out.

When they arrived at the grandmother's house, Curtis tried to explain what happened, but her other daughter (this actually appears to have been another older sister of the children) became very aggressive, yelling and trying to assault Curtis. Curtis got back in the van and for her safety drove a bit up the street to await the police and EMS. She called 911 once she was safely away from the house. The police told her that they already had received a report and were on the way. Curtis then called her immediate supervisor.

Broyles contacted the investigating officer, Wayne Maiden. There was no contact between the vehicles and no damage. No tickets were issued. Medical records were secured from Salem Hospital.

After concluding his investigation, Broyles wrote his report and determined that allegations of abuse or neglect were "not established." There was not a preponderance of evidence that the children had been abused or neglected, but they had been placed at a substantial risk of harm and there had been minor soft tissue injuries.

Broyles could not recall if the van had hand rests. The front seats are "relatively high." He did not recall if the seat belts were lap and shoulder belts. He agreed that the mark on D.K.'s right shoulder could have been from the shoulder restraint.

According to Broyles, it was the children who volunteered information about a GPS. In his report, he does not mention the GPS in regard to his report of his interview with D.K., nor does he say that D.K. claimed that Curtis was "inattentive." However, he explained that he had no reason to doubt Curtis's claim that she had pre-programmed the GPS. In fact, in his view, if had she been inattentive she would have T-boned the other vehicle.

The witness agreed that J.G. made it clear that he did not like Curtis. The boy explained that he did not like the way she talked to the children and, as an example, the boy reported that she had once not finished parking and A.S. was unbuckling her seat belt. Curtis told her to put it on as she was not done parking. J.G. said that what bothered him was not so much what she said as how she said it. A.S. also said that she did not get along with Curtis even before the near accident, although the report does not give an indication why this was so.

Queried about the possibility that A.S. was actually injured either when J.G. lifted her out of and over her seat or when he rapidly exited the vehicle with A.S. in his arms, Mr. Broyles was unable to say how it was that A.S. was actually injured. Broyles also did not know the time sequence regarding when during the .7 mile trip from the scene of the near accident and the grandmother's home J.G. unbuckled his sister's seat belt. He also did not know what the traffic conditions were as the van processed toward the home.

Joanna Delvecchio, M.D. was the emergency room physician on duty at Salem Memorial Hospital when the children were brought there after the incident. In order to testify she reviewed the hospital records to refresh her recollection. A.S. was transported by ambulance and complained of chest and abdominal pain. A chest x-ray and ultrasound were normal, as was her physical examination. She had a frontal hematoma, but no imaging was performed of her head. Her neurological examination was normal. The doctor was told that there had been a sudden slamming of vehicle's brakes and the chief complaints were consistent with such an event. The child was given ibuprofen and discharged the same day. D.K. had no imaging studies performed. He had a right-side neck abrasion, a superficial injury consistent with a seat belt tightening. J.G. complained of pain in his hand from having punched the "car."

A.S., now A.R., having been adopted by her grandmother and now ten years old, testified that there was an "accident", "but there really wasn't." She said that Curtis "kept looking at her GPS." After the incident, Curtis drove to another road not where the house was. The girl recalled getting out of her seat belt and her brother holding her when she was out of the car. She also recalled that when the brakes were put on, the shoulder belt was "tight." She said that Curtis stopped the car two streets from the house when her brother took off her seat belt. She cried because she had hit her head, but she did not tell the driver this. The driver yelled at her to put her seat belt on. J.G. was "kind of really angry" and hit the window with his hand. He pulled her over the arm rest, and she described herself as "arching and stood up." The driver told J.G. to sit down and put A.S. back in her seat.

D.K., now D.R., also adopted by his grandmother, described that after the near accident, he recalled both his brother and sister out of their seatbelts. He remembered that his sister was crying. He does not recall if Curtis asked her why she was crying or if she asked if anyone was injured.

Yolanda Curtis testified that she has been employed by DCF since January 20, 2007. Ms. Curtis explained that when she transported the children, she did have a Tom Tom 4x4 GPS which had an audio feature. She placed the device in the drink cup and

plugged it into the lighter. After the fifty-minute visit she proceeded to drive the children to their residences. She programmed the device as soon as she got into the vehicle. She checked to make sure the children were belted into their seats, turning around to check on each of them. She saw that A.S.'s belt was over her shoulder, and from her experience with this child, during which she had stood with the door open to make sure the seat belt was properly secure, she trusted that A.S. could close the belt herself. The child was not in a booster seat, and at the time the policy was that the booster was to be used for children up to five years old, although that policy has since been changed. She noted that due to the height of the front seats, so long as they were belted into their seats, the children could not see what she was doing as she drove. Although she acknowledged that she had used other routes in transporting the children, on this day she drove the route that she had been using more recently, travelling on Route 295 for thirty minutes and then on Route 130. She then made a right on Broad. She denied that at this point she was looking down at anything or that her phone had fallen on the floor. A black Explorer, travelling in the opposite direction than she was, approached her vehicle, stopped, and then as she, having the right-of-way, continued, the Explorer made a sudden left turn directly in front of her. She braked the van "harder", although she denied that she "slammed" the brakes. The person in the other vehicle, which had driven into the parking lot of a store, did not get out of that vehicle. There was no contact between the vehicles. Curtis noted that she was glad that the children had their seatbelts on, because they were always taking them off. The children all verbally indicated that they were okay, either saying "yes" or "uhhum." No one said anything about banging their head and she saw no indication of any injury, so she did not think that anyone had been hurt. She was near the grandmother's home, about five blocks away. She made a right and then a left turn. Two blocks from the house, the girl began to cry and her seat belt was off, as her brother pulled her from her seat. Curtis told him to put her back in the seat. At this point she was one block from the house, which was already in sight. Curtis was travelling at the speed limit. She agreed that she had never been trained that it was acceptable to drive with anyone not belted in.

According to Curtis, even before he removed his sister's seat belt, J.G. was ranting and punching the window, saying that they had had an accident, when in fact

they had not. Curtis described J.G. as having a violent temper and as he was acting out, she felt that she needed to get to the grandmother's home. This was not the first time that the boy had acted this way; he "just mouthed off at times."

Curtis noted that it was quite common for the seatbelts to lock up so as to become very tight. It happened "all the time."

The appellant described the confrontation that she was faced with at the house, with the children's sister. She never had an opportunity to ask why A.S. was crying. J.G., who had carried his younger sister into the house, came out to restrain his older sister to keep her from assaulting Curtis. Curtis got back in the van and pulled away, and as she did, something was thrown at the van. She knew that as J.G. did not live at his grandmother's home, he could not be left there, so Curtis called J.G.'s caseworker.

Ms. Curtis explained that seat belt training was not mandatory, but she had taken one day of training, not completing a five-day course due to car trouble. She did not get out of the van directly after the near accident to check for damage. She did not stop the vehicle in the street when she became aware that the girl's seat belt was off, as she was so close to the house and felt it best under the circumstances to get the children there. She did not know if there were vehicles behind her on the street as she proceeded to the home over the last block or two.

Curtis recalled that Mr. Broyles asked her if she had been distracted, which she denied.

#### Discussion

In a civil service disciplinary proceeding, the appointing authority bears the burden of proving by a preponderance of the credible evidence that an employee has violated provisions of the Administrative Code. N.J.A.C. 4A:2.2-3 provides the several grounds for the imposition of discipline. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550, 560 (1982).

The appointing authority provides the charged employee with notice of the charges through the medium of a PNDA, which contains a section denoted "Incident giving rise to the charge(s)." This section provides the specification of the basis for the contention that the employee acted in opposition to the expected standards of conduct that govern her employment. Here, the specification refers to certain "facts" upon which the claim that Ms. Curtis violated her duties and placed the children at "substantial risk of harm" are based. Referring to the events of August 12, 2015, it notes that the employee and her juvenile charges were "almost in an accident with another vehicle", that the investigation of possible abuse or neglect resulted in a finding of "not established", that Curtis acknowledged that she had slammed on the brakes, that the children sustained injuries, that they were upset and that Curtis "failed to appropriately assess their need for medical treatment and safety." No indication of exactly how she failed in that task is revealed by the Specification, although there does seem to be an implication that the fact that there was almost an accident was somehow a failure on her part to protect the children's safety.

I FIND that on August 12, 2015, Yolanda Curtis was performing her delegated responsibility to transport three children to and from a visit with their mother. On the way back to the children's grandmother's home, where the younger two of the three resided, an Explorer suddenly turned directly in front of the van Curtis was driving. Apparently the Explorer was doing so in order to enter a store parking lot. Faced with the prospect of immediate danger to herself and the three children, Curtis applied the van's brakes quickly and with force. She herself described doing so "harder," meaning harder than normal, whereas the children said that she slammed on the brakes. Indeed, the Specification claims that Curtis "slammed on your brakes." Of course, faced with the direct threat of a collision, it would be the natural and correct course of action for her to do just that, slam on the brakes to avoid colliding with a vehicle turning abruptly into her path. Even by their own accounts, the children were belted in at the time.

In assessing the incident as a conclusion to an investigation conducted by the Conflict Unit of the Public Defender's Office, the investigator, Mr. Broyles, and his

supervisor who approved the release of his report and the report of the conclusion regarding whether any abuse or neglect occurred, characterized the children as having been "placed at substantial risk of harm." This statement in and of itself is no surprise. Of course they were placed at such risk at the time that the Explorer crossed in front of the van. An actual collision could have substantially harmed them, as well as Ms. Curtis. However, this threat of harm was not caused by Curtis, that is, unless her driving was a factor in the near collision. However, the police issued no tickets to her for any offense. Mr. Broyles, a police officer for over twenty years, testified that in his opinion if she had been inattentive she would have collided with the Explorer, she would have "T-boned" that vehicle. Despite what the children had told him, he also had no reason to doubt Curtis' explanation that she had pre-programmed the GPS.

The Specification claims that by her actions, Curtis "placed the children at substantial risk of harm." N.J.A.C. 3A:10-7.3(c) defines several findings that can be made following an investigation of an allegation of child abuse or neglect. A charge can be either "substantiated", "established", "not established", or "unfounded." "Not established" means "there is not a preponderance of the evidence that a child is an abused or neglected child as defined in N.J.S.A. 9:6-8.21, but evidence indicates that the child was harmed or was placed at risk of harm." N.J.A.C. 3A:10-7.3(c)3. By its very definition, this finding means that even where the alleged perpetrator of child abuse or neglect did absolutely nothing wrong, if the situation under investigation by its facts did involve exposure of a child to "risk of harm" or the child was harmed, the finding must be "not established." This is in contrast to a finding of "unfounded", where just as with "not established", "there is not a preponderance of the evidence indicating that a child is an abused or neglected child as defined in N.J.S.A. 9:6-8.21", but where "the evidence indicates that a child was not harmed or placed at risk of harm." Based upon the competent evidence presented here, I **FIND** that Ms. Curtis testified truthfully that she pre-programmed the GPS which then operated verbally and that she was not distracted when she was driving just before the Explorer unexpectedly crossed directly in front of her as she proceeded, with the right-of-way. She had no choice but to push hard on her brakes in order to avoid a collision. The threat of such a crash was quite real, and, as such, she and the children were all placed in a situation which presented a real risk of

harm, even substantial harm to each of them. However, despite the choice made here by the appointing authority to charge her with placing the children at "substantial risk of harm," in fact, I **FIND** that Ms. Curtis' action prevented the children from suffering any significant harm.

As for the children's each having claimed that Ms. Curtis was looking down at the GPS or phone just before the near collision, I find it hard to believe that even if the three could all see above or around the high front seats to observe the area where the GPS rested, that each just happened to be looking right there just before the brakes were applied. While I cannot be sure that they were coached to say this, it seems far-fetched that all three would claim having been aware of this supposed distracted conduct. I therefore discount their assertions of distracted driving or inattentiveness on Curtis' part as unreliable.

As noted, the Specification does not clearly detail exactly what facts the appointing authority contended showed the alleged lack of proper conduct by Curtis. But the reference to the children being upset and injured suggests that at least part of the supposed misconduct occurred after the crash was avoided and Curtis began to drive to the grandmother's home, some .7 of a mile from the spot where the near collision occurred. After the near collision, it is not surprising that the occupants of the van would have been shaken by the sudden stop and the realization of such a near miss. As for her conduct after leaving the scene of what thankfully was a near miss, I **FIND** that Ms. Curtis did not ignore the children or berate them. She inquired if all were okay, and at first they might well have thought that they were. I **FIND** that they each verbally confirmed that they were okay. The abrasion caused by the seat belt, and any muscle soreness resulting from the tightening of the belts at the time of the sudden application of the brakes, might well not have manifested enough immediate discomfort for the children to have even been aware so quickly that they were injured. As for the bump on A.S.'s head, as the van proceeded for the short journey from the scene of the near crash to the children's grandmother's home, the seven-year-old girl, perhaps the most vulnerable of the three to becoming upset at the sudden event, began to cry. Whether her initial response of crying was characterized as a whimper or not, she was upset. By the time this child arrived at the hospital she had clearly bumped her head, as the



doctor confirmed. But how she sustained this injury, which fortunately was not serious and required only ibuprofen as treatment, is not at all clear. There is absolutely no evidence that either at the time of the near collision or directly thereafter any of the children were not securely seat-belted. In fact, the girl told Broyles that she had made the seat belt "extra tight." As such, it is not clear how A.S. would have been thrust forward in such a manner as to bump her head on the rear of the driver's seat. None of the other occupants appear to have been moved in such a fashion. While the doctor confirmed that this type of injury was consistent with a sudden slamming of the brakes, it is also possible that this injury could have been the result of the child being yanked up and over the back of her seat by J.G. into his seat as the vehicle moved, as she may have banged her head then, or she might have banged her head on the door frame as she was rushed out of the van by J.G. And, even if the injury did somehow result from the sudden application of the brakes in an emergency, given that the girl was wearing her seat belt at the time, I **FIND** that that is hardly any reason to fault Ms. Curtis for the child having been injured. Indeed, in the face of the sudden emergency, her action undoubtedly saved all of the children from more serious injury.

As for what occurred as the van proceeded for less than one mile to their grandmother's, it is clear enough that when J.G. heard his sister crying he got upset. In fact, he was already upset before she cried. He seemed to blame Curtis for the near miss. As Broyles related, the children all seemed to have thought that an actual collision did occur, or at least that is what they claimed. Even his siblings confirmed that J.G. had a temper. He admitted to Dr. Delvechhio that he punched the window. He unbuckled his sister from her seat and somehow pulled or yanked her over the seat into his lap. He yelled at Curtis. Apparently, the appointing authority thinks that at that point Curtis should have stopped the van, either in the middle of the street, or possibly pulled over if such was possible on this street, rather than proceed directly to their grandmother's house. Curtis explained her judgment as that it was best, given the extremely limited distance left to travel, to get to that house, where presumably some adult assistance could limit J.G.'s rage and calm the children.

I **FIND** that Ms. Curtis exercised rational judgment in the face of the conduct of J.G. It is true that hindsight might suggest that she possibly could have stopped the vehicle in the midst of the .7 mile trip, tried to calm J.G., who might well have been out of control at that point, and made sure that all were buckled up. But the situation must be examined as it presented itself to her at the time. If the journey she needed to take from the point when J.G. started to act out had been longer in distance or time, I would agree that she likely would have had to stop and try to regain control. But events do not happen in a vacuum. Here, the necessary journey was of minimal distance, and stopping on the street to try to calm things down might well have ended up with J.G. bolting off, with or without his sister. The grandmother's home was at least a better place for him to go than out of the van at some spot short of that house.

While perhaps what Curtis did was not 100 percent perfect, I **CONCLUDE** that she did not fail in her charge to assess the situation and try to assure the safety of her charges. I **CONCLUDE** that the appointing authority has failed to establish by a preponderance of the credible evidence that Ms. Curtis violated any of the several provisions of the Administrative Code. The charges against her are **DISMISSED** and it is **HEREBY ORDERED** that if she has served any of the suspension time, she is to be made whole for any lost wages and benefits.<sup>2</sup>

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

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<sup>2</sup> Should the Civil Service Commission see fit to find against Ms. Curtis, it is noted that she has no prior disciplinary record.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



February 15, 2018

DATE

JEFF S. MASIN, ALJ t/a

Date Received at Agency:

2/15/18

Date Mailed to Parties:

2/16/18

mph

**APPENDIX**

**LIST OF WITNESSES:**

**For appellant:**

Yolanda Curtis  
Amanda Rose Hammond-Jakubowicz

**For respondent:**

Roger Broyles

**LIST OF EXHIBITS:**

**For appellant:**

None

**For respondent:**

- R-1 NJ Civil Service Commission Job Specification No. 54249 for Assistant Family Service Worker 2
- R-3 DCF Use of State Vehicle Policy
- R-4 Preliminary Notice of Disciplinary Action for Yolanda Curtis, dated 12/3/15
- R-7 Final Notice of Disciplinary Action for Yolanda Curtis, dated 4/26/16
- R-10 NJ Office of the Public Defender letter to Lisa Von Pier, dated 1/6/15
- R-11 NJ Office of the Public Defender, Conflict Investigations Unit, Report of Investigation
- R-12 Training Transcript for Yolanda Curtis
- R-17 DCF Screening Summary