

STATE OF RHODE ISLAND  
COMMISSIONER OF EDUCATION

STUDENTS C. Doe,  
By their parents,

*Petitioner*

v.

FOSTER-GLOCESTER REGIONAL  
SCHOOL DISTRICT,

*Respondent*

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RIDE No. 24-011K

**DECISION AND ORDER**

**Held:** Petitioners' request for daily, door-to-door transportation was denied because Petitioners failed to introduce sufficient evidence demonstrating that the School District: (1) violated either the procedural or substantive requirements of Section 504; or (2) failed to provide the students with suitable transportation under either R.I. Gen. Laws § 16-21-1 or District policy.

August 27, 2024

## I. INTRODUCTION

On or about March 12, 2024, Petitioners, Mr. and Mrs. Doe, on behalf of their minor daughters, Student M. Doe (“M. Doe”) and Student L. Doe (“L. Doe” or, collectively, “Does”), filed a petition with the Commissioner appealing: (1) the sufficiency of the accommodations outlined in L. Doe’s draft 504 plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq.*, 34 C.F.R. § 104.1, *et seq.* (“Section 504”); and (2) the decision of the Foster-Glocester Regional School District (“FGRSD” or “District”) denying Does daily bus transportation to and from school. Petitioners seek an order from the Commissioner finding that the FGRSD must provide Does with door-to-door bus transportation during the entire school year.

## II. JURISDICTION AND STANDARD OF REVIEW

The Commissioner has jurisdiction over this appeal pursuant to R.I. Gen. Laws § 16-39-1, and as the Commissioner has noted on many occasions, the applicable standard of review is *de novo*. See *Alba v. Cranston School Committee*, 90 A.3d 174, 185-85 (R.I. 2014) (citing *Slattery v. School Committee of Cranston*, 116 R.I. 252, 262 (1976)). The Petitioner has the burden of proof by a fair preponderance of the evidence. See *Larue v. Registrar of Motor Vehicles, Dept. of Transp.*, 568 A.2d 755, 758-59 (R.I. 1990) (citing *Gorman v. Univ. of Rhode Island*, 837 F.2d 7, 15 (1st Cir. 1988)).

## III. MATERIAL FACTS

The material facts are not in dispute, and the following recitation was deduced from the testimony and documentary evidence submitted at the separate hearings before the undersigned Hearing Officer on April 8, 2024 and May 16, 2024.

1. L. Doe is a thirteen-year-old rising eighth-grade student at Ponaganset Middle School (“Ponaganset”), located within the FGRSD. Apr. 8, 2024 Hr.’g Tr. 8:21-9:2. M. Doe is an eleven-year-old, rising seventh grade student at Ponaganset. *Id.*
2. Does reside on a rural, dirt road in the town of Foster. *Id.* at 8:10-11. The road is unlit, with no sidewalks and “spotty” to no cell phone reception. *Id.* at 11:1-8.
3. Does previously received daily door-to-door transportation via a regular size school bus (“Bus 5”). *Id.* at 13:3-6, 42:18-20.
4. Prior to the start of the 2023-2024 school year, Petitioners were informed that Does’ bus stop would be moved approximately .8 miles from the end of their driveway to the closest intersection. Pet’r Ex. 1.
5. The FGRSD Transportation Policy (“Transportation Policy”) provides that “the maximum distance normally required of a student to reach either a bus stop or a school building within the school district shall not exceed” one and a half (1.5) miles for students in grades 6-12. Pet’r Exs. 8, 9.
6. The Transportation Policy also requires FGRSD to “arrange the bus routes so as to ensure maximum efficiency without sacrificing safety.” *Id.*
7. In accordance with this policy, before relocating Does’ bus stop, the Branch Manager for Ocean State Transit testified that the bus company performed a safety assessment of Does’ road, which considered safety concerns for students walking and riding the bus as well as the walking distance and physical characteristics of the road itself, such as sharp corners. May 16, 2024 Hr.’g Tr. 87:13, 89:7-19, 95:23-96:13. He further testified that any medical concerns that may be relevant to a student’s need for transportation is handled by the District. *Id.* at 97:24-98:10.

8. The Branch Manager testified that Does' road did not present any safety hazards for student walkers that are different from any of the other dirt roads in Foster that students are currently required to walk. *Id.* at 96:20-97:2. He further testified that there are approximately fifteen other roads within FGRSD that a regular size school bus cannot, and does not, travel down, seven of which are also dirt roads; all the children residing on these roads walk to the bus stop set forth by the bus company. *Id.* at 93:6-13.
9. Ms. Doe testified to having safety concerns over this change in transportation relative to both the road conditions and Does' respective medical diagnoses, based in part on Ms. Doe's experience as a volunteer EMT and Mr. Doe's experience as an EMT and Fire Chief of the Moosup Valley Fire Department. Apr. 8, 2024 Hr.'g Tr. 10:19-11:8, 14:4-19.
10. L. Doe has asthma and a bee allergy. *Id.* at 16:13-16. She self-carries a prescription inhaler and EpiPen. *Id.*
11. A doctor's note from L. Doe's asthma and allergy physician opined that "[d]ue to her [a]sthma and [a]llergies it is best that [L. Doe] not be walking to and from the bus stop." Pet'r Ex. 6.
12. M. Doe has an effective individualized learning program ("IEP") for ADHD. Apr. 8, 2024 Hr.'g Tr. 13:10-13. According to Ms. Doe's testimony, M. Doe has anxiety, ADHD and an auditory processing disorder, which "greatly impair[s] her ability to judge where sounds are coming from[,] slow[s] her response to sounds[,] and, therefore[,] may prevent her from not only hearing an approaching vehicle, but also slow her reaction time to removing herself from an unsafe location." *Id.* at 13:11-16; Pet'r Ex. 1.

13. Due to her safety concerns, Ms. Doe contacted the FGRSD Superintendent prior to the start of the 2023-2024 school year to request daily door-to-door transportation on Bus 5. Pet'r Ex. 1.
14. Following this conversation, FGRSD worked with Ocean State Transit to provide Does door-to-door transportation via Bus 5 during approximately the first five school days of the 2023-2024 school year. Apr. 8, 2024 Hr.'g Tr. 24:9-13.
15. Subsequently, however, the Ocean State Transit Branch Manager testified that, after receiving safety concerns from the Bus 5 driver, he conducted a personal site visit which resulted in a determination that the bus could not safely turn around or otherwise travel down Does' road. May 16, 2024 Hr.'g Tr. 90:10-23.
16. As a result, FGRSD and Ocean State Transit began providing Does with daily door-to-door transportation via a minibus. Apr. 8, 2024 Hr.'g Tr. 25:12-15.
17. Does rode the minibus for a period of approximately ten school days, with Ms. Doe testifying that the minibus schedule resulted in Does being late to school. *Id.* at 25:19-26:7.
18. Ultimately, in December 2023, the Ocean State Transit Branch Manager advised that the bus company was no longer able to provide Does with door-to-door transportation via minibus due to the minibus' schedule. *Id.* at 27:2-10.
19. At this time, FGRSD indicated to Petitioners that Does would only receive transportation at the relocated bus stop via Bus 5. *Id.* at 30:11-14.
20. Petitioners subsequently pursued transportation accommodations under Section 504 for L. Doe due to her medical conditions.<sup>1</sup> *Id.* at 30:15-19.

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<sup>1</sup> As M. Doe already had an effective IEP, Petitioners were unable to also pursue a 504 plan on her behalf.

21. 504 team meetings were held on January 19, 2024 and March 7, 2024, during which time the team reviewed all L. Doe's medical documentation, as provided by Petitioners, and discussed L. Doe's diagnoses of a bee allergy and asthma. *Id.* at 30:24, 32:8-13, 34:5-35:8.
22. The FGRSD Director of Student Supports and 504 Coordinator ("504 Coordinator") testified that, based upon the above, as well as in consultation with the school physician, L. Doe's 504 team determined that she was eligible for a 504 plan based on her bee allergy, not her asthma. *Id.* at 54:7-55:3.
23. Accordingly, the 504 team drafted a 504 plan that provided L. Doe with a transportation accommodation, which was presented to Petitioners on March 7, 2024. Pet'r Ex. 4. The plan provided for daily door-to-door transportation via minibus from the beginning of the school year through October 31 and post-April school break through the end of the school year. *Id.* FGRSD also agreed to extend this transportation to M. Doe so long as the students were both going to and from the same location at the same time.
24. The School Nurse for Ponaganset Middle School ("Ponaganset Nurse") testified that she drafted the health care plan for L. Doe's 504 plan. Apr. 8, 2024 Hr.'g Tr. 60:5-9. In so drafting, she explained that in her opinion, transporting L. Doe on a minibus, rather than a regular size school bus, was most appropriate in light of L. Doe's bee allergy because, in the event of an emergency, a medically trained aide would be available to assist her. *Id.* at 60:15-61:6.
25. After disagreeing with the draft 504 plan, Petitioners filed the instant joint appeal.
26. During this appeal process, Petitioners accepted the draft 504 plan without prejudice to their instant claims. Thus, L. Doe, and M. Doe by agreement, began receiving the transportation accommodation effective April 24, 2024. May 16, 2024 Hr.'g Tr. 74:12-17.

27. However, as of this same date, testimony from both sides evidenced that the students were being dismissed early from class, and therefore missing instruction time, in order to accommodate the minibus' afternoon schedule. *Id.* at 74:20-22.

28. Upon being alerted to this issue, FGRSD worked with the bus company to ensure that the students would no longer be dismissed from class early when receiving this transportation accommodation. *Id.* at 88:1-19.

#### **IV. POSITIONS OF THE PARTIES**

##### **1. Petitioners**

Petitioners allege that FGRSD failed to: (1) “fully and properly evaluate” L. Doe’s medical conditions under Section 504, “thus creating a facially defective 504 Plan for” L. Doe; and (2) failed to provide Does with “suitable transportation” as required by R.I. Gen. Laws § 16-21-1.

As to Petitioners’ Section 504 claim, they argue that: (1) FGRSD ignored L. Doe’s complete list of medical conditions, specifically her asthma diagnosis, that would support the granting of a daily door-to-door transportation accommodation; and (2) the temporal conditions set by FGRSD in L. Doe’s 504 plan are arbitrary and without any evidentiary support or basis.

As to the general transportation allegation, Petitioners claim that the .8 mile walk to the bus stop is unsafe for both children because of their medical diagnoses as well as the road conditions. Even though FGRSD did attempt to provide daily door-to-door transportation via minibus at the start of the 2023-2024 school year, Petitioners allege that this transportation was unsuitable because the minibus consistently delivered the children to school late. Instead, Petitioners argue that door-to-door transportation via a regular size school bus is the only suitable transportation, “as it provides safe, timely transportation, allowing Petitioner’s children to reach

school on time.” Petitioners further claim that FGRSD’s position that Bus 5 is unable to safely travel down the students’ road is negated by the fact that Bus 5 successfully transported the students door-to-door while in elementary school and at the start of the 2023-2024 school year.

## **2. FGRSD**

FGRSD first argues that the 504 team properly determined that only L. Doe’s bee allergy qualifies her as a student with a disability under Section 504. Moreover, FGRSD claims that L. Doe’s 504 plan sufficiently addresses her need for reasonable accommodations, and Petitioners have failed to present any evidence either rebutting the District’s decision not to provide a 504 accommodation for L. Doe’s asthma or demonstrating why the seasonal transportation accommodation is inadequate. While FGRSD acknowledges the initial shortcomings of the minibus schedule in executing L. Doe’s 504 plan, given that the students missed class instruction, the District has since rectified this concern and provided adequate transportation via minibus in accordance with L. Doe’s 504 plan. Lastly, FGRSD avers that it is not required to provide the optimal or preferred accommodation and, instead, is only required to provide reasonable accommodations suited to L. Doe’s qualifying disability, which it has done here.

FGRSD next argues that it has provided suitable transportation to both children in compliance with § 16-21-1 and the Transportation Policy. In relocating Does’ bus stop approximately .8 miles from their home, the bus company and FGRSD considered the general hazards of Does’ road, the potential risk to the children, and the ability of a regular-sized school bus to safely navigate the road. Ultimately, the District and bus company properly determined that door-to-door transportation on Bus 5 was unsafe and the risks posed to Does was no greater than those faced by other students residing on similar dirt roads in Foster who are able to safely walk to their respective bus stop. FGRSD also argues that it considered Does’ respective



medical conditions but, ultimately, aside from the transportation accommodation provided in L. Doe's 504 plan, the medical documentation provided by Petitioners did not sufficiently link the need for daily door-to-door transportation to either student's respective diagnoses. Indeed, FGRSD argues that a student's diagnosis, standing alone, is not sufficient evidence of that student's ability to safely walk to the bus stop.

## V. DECISION

### 1. FGRSD has complied with the procedural and substantive mandates of Section 504 in both evaluating L. Doe and drafting her 504 plan.

Section 504 provides that “[n]o qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity which receives Federal financial assistance.” 34 C.F.R. § 104.4(a). To be eligible for Section 504 protections in the elementary and secondary education context, a student must be determined, as a result of an individual evaluation, to have “a physical or mental impairment that substantially limits a major life activity.”<sup>2</sup> 34 C.F.R. § 104.3(j). In conducting an eligibility evaluation, the 504 team must consider a variety of data and, upon a determination of eligibility, “ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.” *See* 34 C.F.R. § 104.35(b)-(c). Once a student is identified as eligible for services under Section 504, the school district is required to provide the qualifying student with a free appropriate public education (“FAPE”) by providing “regular or special

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<sup>2</sup> “Physical or mental impairment” and “major life activities” are defined in 34 C.F.R. § 104.3(j)(2)(i) and 34 C.F.R. § 104.3(j)(2)(ii), respectively. While “substantially limits” is not defined by Section 504, the U.S. Department of Education, Office for Civil Rights (“OCR”) has stated that whether a student has an impairment that “substantially limits a major life activity must be made on the basis of an individual inquiry.” *See Protecting Students with Disabilities, Frequently Asked Questions about Section 504 and the Education of Children with Disabilities* at Question 11, available at: <https://www2.ed.gov/print/about/offices/list/ocr/504faq.html>.

education and related aids and services that are (i) designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures governing 104.34 [educational setting], 104.35 [evaluation and placement], and 104.36 [procedural safeguards].” 34 C.F.R. § 104.33(b). It is therefore up to the knowledge and discretion of the Section 504 team to determine what reasonable services or supports are needed to provide the student with a FAPE.

Here, the record first shows that FGRSD properly conducted an individual evaluation of L. Doe and, as a result of that evaluation, credibly found that L. Doe was eligible for Section 504 accommodations due to her bee allergy. There is no dispute that L. Doe’s 504 team met twice on January 19, 2024 and March 7, 2024, and that there was parental attendance and input at each of these meetings. During the first meeting, Ms. Doe presented L. Doe’s medical records relating to both her asthma and bee allergy, which included a doctor’s note from L. Doe’s treating physician stating that “[d]ue to her Asthma and Allergies it is best that [L. Doe] not be walking to and from the bus stop.” *See* Pet’r Ex. 6. Testimony from members of L. Doe’s 504 team, including the FGRSD School Psychologist, Section 504 Coordinator, and Ponaganset Nurse, confirm that all the medical records presented by Ms. Doe were fully reviewed and discussed by the team. The team subsequently consulted with the school physician<sup>3</sup> and, based on the school physician’s opinion, determined that L. Doe was eligible for accommodations under Section 504 upon finding that her bee allergy substantially limited her ability to safely walk .8 miles to the bus stop during the limited period of time when bees are most active in New England.

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<sup>3</sup> While it is clear that the school physician requested to speak with L. Doe’s treating physician, allergist, and counselor, and that Ms. Doe executed a Release of Confidential Information on January 22, 2024, there remains a dispute as to whether the school physician actually spoke with L. Doe’s treating doctors before providing his opinion on L. Doe’s eligibility under Section 504. However, this question need not be resolved to find that the District properly evaluated L. Doe given the lengthy testimony from members of L. Doe’s 504 team outlining L. Doe’s evaluation process.

Consequently, the FGRSD Section 504 Coordinator directed L. Doe's 504 team to draft a 504 plan providing L. Doe with seasonal transportation via minibus, which was presented to Petitioners during the March 7, 2024 meeting in draft form.

In light of the 504 team's above-detailed evaluation process, it cannot be said that the team erred in ultimately finding that L. Doe's asthma diagnosis was not a substantial impairment warranting any reasonable accommodations under Section 504. Indeed, the 504 team members each credibly testified that, during the 504 team meetings, all present parties, including Ms. Doe, appeared most concerned with L. Doe's bee allergy and the associated risk of her going into anaphylaxis shock should she be stung by a bee while walking to the school bus. Contrary to Petitioners' assertions, there is no evidence that the 504 team "ignored" L. Doe's asthma diagnosis. Thus, it is clear from the record that L. Doe's 504 team complied with the procedural mandates of Section 504 in evaluating L. Doe by contemplating all of L. Doe's diagnoses, reviewing all her medical documentation, and consulting with the school physician before ultimately determining that the only "physical or mental impairment that substantially limits a major life activity" is L. Doe's bee allergy.<sup>4</sup> See 34 C.F.R. § 104.35(b)-(c).

Moreover, FGRSD drafted a substantively appropriate 504 plan providing L. Doe with reasonable accommodations based upon the 504 team's evaluation and determinations. While Petitioners take issue with the 504 plan's provision of only seasonal transportation via minibus, testimony from L. Doe's 504 team members provides a sufficient evidentiary basis in support of this particular, limited accommodation. The temporal conditions set forth in the 504 plan, i.e. that L. Doe was entitled to door-to-door transportation from "August (beginning of school year)

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<sup>4</sup> To the extent Petitioners maintain that L. Doe's asthma diagnosis was not duly considered by the 504 team, they may request a re-evaluation. However, it would not be appropriate for the Commissioner to intervene in the 504 evaluation process absent any finding of a violation.

through October 31” and “Post April school break through end of school year,” are supported by the school physician and 504 team’s finding that bees are most prevalent during these warmer months, therefore justifying a transportation accommodation to ensure L. Doe’s safety and access to FAPE only during this limited time period when her individual needs set her apart from her classmates. *See* Pet’r Ex. 4. Additionally, the Ponaganset School Nurse opined that using a minibus ensures the presence of a medically trained aide should L. Doe go into anaphylactic shock, as such medical professionals are not present on regular school buses and, therefore, L. Doe’s medical needs would not be met should she be transported via Bus 5.

Notably, Section 504 does not require FGRSD to provide any preferred accommodation; instead, the District is only required to provide reasonable accommodations that are designed to meet the individual needs of the qualifying student. *See* 34 C.F.R. § 104.33(b). FGRSD has met its obligation to implement reasonable accommodations that provide L. Doe with a FAPE in this case. Therefore, based upon the above, it is evident that the transportation accommodation outlined in L. Doe’s 504 plan is “designed to meet [L. Doe’s] individual educational needs” and adheres to all relevant procedures.<sup>5</sup> *See id.*

**2. FGRSD has provided Does with “suitable transportation” in accordance with § 16-21-1 and the Transportation Policy.**

School committees in Rhode Island are under a statutory duty to provide “suitable transportation” to and from school when either the distance of a student’s residence from the school or bus stop, or a student’s “physical disability or infirmity,” renders the pupil’s “regular

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<sup>5</sup> Even though Petitioners raise concerns about FGRSD’s failure to provide L. Doe with a FAPE during the period of time when the minibus schedule resulted in her missing class time, FGRSD acknowledged this concern and seems to have made efforts to fully resolve this issue. To the extent the minibus schedule causes L. Doe to miss any future class time, however, FGRSD shall convene the 504 team to determine whether, and to what extent, compensatory education services are appropriate.

attendance at school impractical.” R.I. Gen. Laws § 16-21-1(a). The Rhode Island Supreme Court noted that § 16-21-1:

Should not be read so narrowly as to preclude consideration of factors other than distance in determining whether or not a child is entitled to bus transportation. The critical issue under the statute is whether the distance the child travels is so great as to make it impractical for the child to attend school regularly. The commissioner therefore may properly consider a host of factors affecting the practicality of traveling the distance to and from school.

*See Brown v. Elston*, 445 A.2d 279, 282-83 (R.I. 1982). The Commissioner has made clear that, in addition to distance, age and hazard are among the factors that may be relevant. *See In the Matter of Student K.M.*, RIDE No. 0036-00 (October 26, 2000).

Here, it is undisputed that the location of Does’ bus stop complies with the proximity requirements of the Transportation Policy; therefore, this analysis focuses only on whether the .8 mile walk to Does’ bus stop renders their regular attendance at school impractical under § 16-21-1. In making the decision to relocate the bus stop, FGRSD and the bus company properly considered the safety of Does, students on the bus, and the efficiency of the bus route in line with both the Transportation Policy and § 16-21-1. Petitioners’ generalized safety perceptions as to Does’ ability to walk to the bus stop were refuted by the positive safety assessment performed by Ocean State Transit, which determined that Does’ road posed no aggravated risks. *See Glenn & Carole T. v. Richmond School Committee*, RIDE No. 0002-88 (Feb. 11, 1988) (holding that the district complied with its transportation policy and § 16-21-1 in relocating bus stop .25 miles from the home after finding that parents’ testimony as to “their perception of road hazards and personal safety of their children” was refuted by the on-site safety inspection performed by the district). Absent any specific hazards, it is also not uncommon for students who reside on rural roads like Does to be required to walk to a bus stop, and to routinely reach that bus stop safely,

as supported by the Ocean State Branch Manager’s testimony. Petitioners have simply failed to present any evidence of a hazard rendering Does’ ability to walk to the bus stop impractical. Thus, as previously noted by the Commissioner, “[t]he design and operation of the transportation system is discretionary within the law in its implementation and the [FGRSD] has demonstrated policies and criteria for the development and execution of a ‘suitable’ system . . . . In the instant case, the parents offered no proof of a ‘safety hazard’ sufficient to contradict the plan.”<sup>6</sup> *Id.*

Petitioners similarly fail to meet their burden of demonstrating that Does’ respective medical conditions make walking to the bus stop impractical. *See K. Doe v. Cranston School Department*, RIDE No. 0035-10 (Oct. 18, 2010). As to L. Doe, FGRSD convened a 504 meeting relative to her asthma and bee allergy and, as detailed *supra*, determined that she was entitled to a seasonal transportation accommodation via minibus. M. Doe has an effective IEP relative to her diagnoses, though, notably, transportation is not included in the IEP as a necessary service. While Petitioners did submit medical records and testimony relating to Does’ respective diagnoses during the evidentiary hearing, the record does not sufficiently explain how either student’s medical condition prevents them from safely walking to the bus stop, nor does the record “identify the particular limitations experienced by [Does] on account of [their diagnoses]” or otherwise “describe how those limitations jeopardize [their] safety while walking on the road[] to and from school.” *See id.* Indeed, both L. Doe and M. Doe have been evaluated by a knowledgeable team of professionals under Section 504 and the Individuals with Disabilities Education Act, respectively, who each determined that daily, door-to-door transportation is not a necessary accommodation to provide either student with a FAPE or otherwise ensure their safety.

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<sup>6</sup> The record contains substantial testimony and documents relating to whether it was safe for a regular size school bus to travel down Does’ road, especially given that Bus 5 successfully transported the students throughout elementary school and during at least the first few days of the 2023-2024 school year. However, this issue is not addressed in depth here given that Does have not demonstrated a need for door-to-door transportation.

Accordingly, there are no health or safety concerns preventing Does for accessing the suitable transportation established by FGRSD in compliance with § 16-21-1 and the Transportation Policy.

**VI. ORDER**

For all of the above reasons, the petition is hereby denied and dismissed.



KAELYN R. PHELPS PRIGGE, ESQ.,  
as Hearing Officer for the Commissioner



ANGÉLICA INFANTE-GREEN,  
Commissioner

Date: August 27, 2024