

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS**

In Re: Student v.
Hopkinton Public Schools

BSEA# 1805239

**Ruling on Hopkinton Public Schools' Motion to Dismiss
Parents' Hearing Request**

Parents' Request for Hearing in the above-referenced matter was received by the BSEA on December 19, 2017.¹ On the same date, December 19, 2017, Hopkinton Public Schools (Hopkinton) filed a Motion to Dismiss the case arguing that as a matter of law the BSEA lacks jurisdiction over general education matters, specifically, Advanced Placement (AP) course admission policies and procedures. Hopkinton asserts that Student was a general education student at the time he was denied admission into AP Biology, and that Student did not become eligible for a Section 504 plan until six months later. Hopkinton further argues that its admission policy is "facially neutral, non-discriminatory, and applied to all students equally." Since, according to Hopkinton, Parents state no claim upon which relief can be granted, the case must be dismissed. Parents filed no response to Hopkinton's Motion to Dismiss until February of 2018.

On January 22, 2018, the matter was administratively reassigned to this Hearing Officer. An Order was issued on January 23, 2018 scheduling the matter for a motion session on February 1, 2018. On January 30, 2018, Parents requested a postponement of the Motion Session due to Father's unavailability. This request was granted via Order issued on February 6, 2018 after securing the parties availability. The February 6, 2018 Order set the motion session for March 15, 2018.

Parents' objection to Hopkinton's Motion to Dismiss was received at the BSEA on February 5, 2018. In it Parents argued that Hopkinton had failed its Child Find responsibilities in failing to recognize Student's handwriting weaknesses since pre-kindergarten, and organizational and focus problems in fifth grade. Parents asserted that Hopkinton did not offer Student FAPE and that despite Student's good grades (mostly As) Hopkinton discriminated against him when it denied Student access to AP Biology in the 2017-2018 school year. Parents' attached several exhibits discussed in the Facts section of this Ruling.

Hopkinton filed a Response to Parents' Objection on February 6, 2018, raising the two year statute of limitations applicable to IDEA claims and seeking dismissal with prejudice of all claims outside the statute of limitations period, and advancing case law in support of its position.

¹ Parents filed their Hearing Request and appeared at the Motion Session *pro-se*, but are now represented by counsel.

During a telephone conference call on March 7, 2017, the Parties were informed that they would be allowed to submit supplemental information regarding the Motion to Dismiss. On March 11, 2018, Parents submitted additional information and advanced additional argumentation much of which had already been advanced in previous submissions.

This Ruling is issued in consideration of all of the Parties' submissions including those received at the BSEA on March 14, 2018, Hopkinton's Student Handbook, Student's transcripts received on March 15, 2018², and the Parties' arguments during the Motion Session on March 15, 2018. I note that some of the Parties' submissions raised issues regarding discovery which are not part of this Ruling.³

I. Facts

The factual statements delineated here have been adopted from Parents' Hearing Request, their submission dated March 11, 2018 (received at the BSEA on March 14, 2018) and the statements made by Parents during the Motion Session held on March 15, 2018. These factual assertions are presumed to be true for purposes of this motion only.

1. Student is a resident of Hopkinton, MA. He lives with Parents and his siblings and attends Hopkinton High School.
2. Hopkinton offers several high school course levels such as: unlevleed courses (e.g., art wellness, drama, music, etc.); college preparatory (CP); Honors (H); accelerated honors (AC)⁴; and advanced placement (AP). AP courses are college level courses offered in a variety of disciplines, which cover broad curriculum content, at great depth, and at a faster pace than that required by the Massachusetts curriculum frameworks. Students are required to read a large amount of material outside of class. AP course curriculums enjoy College Board approval. Upon successful completion of the course and the Advanced Placement Examination for the particular discipline the student may receive college credit at some institutions.
3. The Hopkinton Student Handbook notes at page 12 that students in AP courses must:

²These documents were requested by the Hearing Officer during the Motion Session.

³On March 18, 2018, Parents wrote to the BSEA objecting to Hopkinton's "tactics" in that Hopkinton had faxed information to the Hearing Officer which Parents did not receive until a later date. The information consisted of documents requested by the Hearing Officer during the Motion Session. Parents later received these documents via US mail. Parents further stated that while Hopkinton had not requested their fax number earlier Parents now offered it in their March 18, 2018 communication. On March 18, 2018, Hopkinton responded to Parents' letter noting that they had forwarded the information to both the Hearing Officer and Parents the same date albeit a different route but that the forwarding of the information requested by the Hearing Officer did not constitute *ex-parte* communication. I agree.

⁴"Accelerated honors courses are rigorous, challenging and in-depth courses in which significantly more content is delivered at a faster pace than in an honors course. In addition to having a strong work ethic, students are expected to have a solid academic background in the subject. Accelerated honors and honors courses will prepare students for future study at the advanced placement level" Hopkinton Student Handbook.

- ! Meet all honors criteria [sic].
 - ! Display an enthusiastic disposition to think critically and analytically, and enjoy engaging in discussions of abstract concepts and ideas.
 - ! Demonstrate a strong interest and passion for the subject matter.
 - ! Show both willingness and ability to commit the time and effort necessary to handle a rigorous course load.
4. In Hopkinton a student seeking admission to AP level courses must obtain the pertinent teacher's recommendation in addition to meeting other qualification criteria and demonstrating that they possess the necessary skills for successful participation. The demonstrated skills must include the ability to read independently and recall essential knowledge, the ability to organize and synthesize large amounts of material and the ability to draft well-organized and sophisticated essays.
 5. When a student does not receive the teacher's endorsement for participation in an AP course, or other level course selected by the student, the student may engage in an override process. The override process must be requested by the student within a defined timeframe (by April 1st of the year in which the course selection is made). Overrides are only considered through a hearing process involving the student, his/her parent(s), and the assistant principal or the appropriate department leader. If the override is granted, the student is required to stay in the course for at least one semester unless the school principal approves a level change.
 6. AP courses and the course selection and override processes described in the Student Handbook are general education processes.
 7. On April 5, 2017 Student and Parents completed Hopkinton's Override from Honors-level Recommendation to AP-level form seeking an override from the recommended honors biology course to the AP biology course. The Form was signed by Hopkinton's representative on June 20, 2017.
 8. Email correspondence between Parents and Evan Bishop, School Principal, dated May 19, 2017, addresses Parents' concerns and the School's position regarding Student's AP Biology override denial. According to Hopkinton the factors taken into consideration in the denial included Student's ninth grade first semester science grade and the teacher's observations of Student's habits and dispositions, his then-current science grade, the then-current teacher's observations, and Student's AP Biology mini assessment results. Mr. Evan noted that Student may request participation in AP Biology in his junior year (2018-2019 school year) and stated that Student would be guaranteed a spot at that time. Parents had also communicated via email with Ms. Lechtanski on September 3, 2017 requesting information regarding grades, policies regarding AP course enrollment, etc. Ms. Lechtanski and Mr. Bishop responded together via email dated September 5, 2017 forwarding the information requested.

9. Parents wrote again to Mr. Bishop via email on September 5 and 6, 2017. By then, Parents had been given the opportunity to review Student's June 2017 science exams. In this communication Parents explained that Student's difficulties focusing caused him to make careless mistakes. Parents noted that Student had undergone a neuropsychological evaluation and that a report and diagnosis would be forthcoming. Parents also inquired whether an AP Biology seat had become available for Student.
10. Email correspondence dated May 24, 2017, reflects Parents' concerns as per a recent vision exam regarding Student having a lazy eye condition. The exam showed that Student had 20/80 vision in his right eye with corrective lenses. While according to Parents, Student may have compensated for his vision impairment "all his life", Parents questioned the need for a Section 504 plan to accommodate the vision deficits. In his response to this email, Michael Donahue agreed that it would be worth discussing whether Student required accommodations through a Section 504 plan.
11. On September 13, 2017, Parent wrote to several Hopkinton staff including Mr. Bishop informing them that Student's neuropsychological evaluation had been completed and that Student had been diagnosed with ADHD. Parent requested an "initial [section] 504 meeting with appropriate parties at [Hopkinton] to determine appropriate accommodations for [Student]". Parent further noted that Student's condition predated Hopkinton's qualification assessment for AP Biology and other accelerated courses to which Student had sought and been denied access. In closing Parent noted

I look forward to working with you all to fully support [Student's] academic success (given his disability), and discuss compensatory action given past discrimination, as governed by ADA and Title II.

12. On August 2, 2017, Craig, Malcolm, Ph.D., performed a comprehensive neuropsychological evaluation of Student due to parental concerns over attention and organization difficulties.
13. Dr. Malcolm noted that Student's performance on tasks of attention and concentration were broadly intact, and while he appeared to fatigue with ease with demands for sustained mental effort, he did not appear overtly inattentive. Dr. Malcolm further noted that Student's

...focused attention for repeating digits forward was in the superior range (91st percentile), with a span of eight; on two measures of working memory or concentration, his ability to repeat numbers backwards was in the upper end of the average range (75th percentile) with a span of five, and his ability to sequence numbers in order was in the lower end of the average range (25th percentile) with a span of five. On [the] WISC-V Picture Span, a visual attention task for attending to

successively longer series of pictures, his score was in the average range (63rd percentile). On the Conner's Continuous Performance Test - - a computerized task of visual *sustained* attention where, for fourteen minutes, the individual has to signal to letters flashed at varying intervals on the screen, except for the letter X- - all subtest scores were within normal limits...[t]hought processing speed was broadly intact... executive functioning...qualitative observations would suggest that [Student] was able to initiate and shift his attention as needed, across a variety of tasks; however, he exhibited organizational difficulties on more open-ended tasks, such as copying the Rey-Osterreith Complex Figure...he exhibited mild impulsivity (11-25th percentile) on a measure of motor programming and inhibiting competing motor responses... On the Wisconsin Card Sorting Test, a task of mental flexibility and problem-solving, for sorting cards to shifting category rules, with minimal *but consistent* feedback from the examiner, [Student's] total number of errors was in the superior range (97th percentile). His strong performance on this measure suggests that [Student] benefits from external structure to aide his problem-solving. Language functions were strong...[v]isuospatial –constructional abilities were broadly intact... learning and short-term memory was variable...In comparison to his strong performance on verbal recall tasks, the latter performances may suggest that [Student] is not a “visual learner”; however, caution should be made regarding this assumption as the visual tasks may have a larger attention factor than the verbal learning tasks as the visual stimuli is presented just once for brief durations (five seconds in the first measure; ten seconds in the latter)... reasoning and problem-solving abilities were strong.... (Neuropsychological Evaluation 8/22/2017).

14. Student and Parents completed Behavioral Rating Scales checklists. Their responses were measured against similar age, same gender peers. In Internalizing Behaviors, Student's responses were in the borderline significant range regarding symptoms of anxiety (e.g., “I worry a lot”). Student's responses appeared to indicate that his self-esteem is not as strong as hoped. Parents' responses raised concerns regarding attention, indicating that Student had difficulties with concentration, placing Student in the borderline significant range. On the Conner's Parent Report Form Parents rated Student as exhibiting clinically significant difficulties related to ADHD behaviors (e.g., easily distracted, inattentive, messy or disorganized), and on a scale measuring “cognitive problems/inattention” rated him in the borderline significant range.
15. According to Dr. Malcolm, Student tended to minimize adjustment difficulties, noting that he often felt bored and fatigued in school and he self-reported mildly elevated levels for anxiety. Parents' behavioral rating of Student was elevated for attention concerns.

16. Dr. Malcolm diagnosed Student with mild Attention Deficit/Hyperactivity Disorder predominantly of the inattentive type inclusive of organizational challenges. Dr. Malcolm also noted mild adaptive problems related to the ADHD diagnosis. Student's symptoms appear to have exacerbated in middle school due to "increasing environmental demands on independent, goal oriented behavior". Dr. Malcolm however, found no evidence of co-founding psychiatric or neurological conditions. Student also carries a medical diagnosis of celiac disease. He recommended that Student receive accommodations such as: additional time to complete tests and assignments, cueing to recheck tests before handing them in, sitting in the front of the classroom, encouragement for class participation, having an extra set of books at home, and other accommodations.

17. On September 13, 2018, Parent wrote an email to Mr. Bishop requesting an initial Section 504 meeting to discuss the results of the neuropsychological evaluation and ADHD diagnosis and determine appropriate accommodations in light of Dr. Malcolm's recommendations. Parents requested that the meeting take place in mid-October 2017. At the meeting, Parents further wished to discuss compensatory education owed Student as a result of Hopkinton's past discrimination against Student consistent with ADA and Title II. Parents noted that Student's condition

... predates HHS assessments on his qualifications for AP Biology and other related accelerated courses from which [Student] was disqualified; via statistically insignificant academic "under-performance", discriminat[ing] tests (which failed to accommodate challenges of those with his condition) and "soft skills" assessments which had specific bias against those with his disability.

18. In a letter written by Dr. Malcolm on February 28, 2018, he restated Student's diagnosis and noted that:

Nothing in the diagnosis of ADHD-I, nor the support of a 504 accommodation plan, should prohibit Student from full access to the curriculum, including AP courses, and there is nothing in his neuropsychological profile which would indicate that he would be at a disadvantage in such accelerated courses with appropriate accommodations. (In fact, his overall IQ is in the high average range. What is more, many individuals with ADHD will "hyper-focus" when appropriately motivated).

19. Emails between Parent and Mr. Bishop dated November 21, 2017 reflect Parents' understanding that two seats had become available in AP Biology on or about September 29, 2017, but Mr. Bishop had failed to inform Parents. In this email, Parents posed nine questions which Mr. Bishop responded. Generally, Mr. Bishop

noted his disagreement with Parents that Student was ready to take AP Biology and noted that Student had not been admitted to this class because

...1) he had not qualified numerically; 2) he did not earn a teacher recommendation; and 3) he fared poorly on a mini-assessment that would help decide if an override was possible for him. The add/drop period was cited as it exists in our handbook. Yes, the discretion was up to me and my staff. As professionals in education, we did not believe a move to AP Biology would have been warranted for your son or any of the honors students, even those whose performance in grade 9 exceeded you son's. Historically, at HHS, we have never added an honors level student to an AP course, once the course was underway... As addressed last summer, given his success in Honors Biology, he will be admitted to the course in September of 2018, if he chooses to take the AP Biology course. As stated above, whether your son is faring well in honors right now or not, a move to AP Biology is not feasible based on the amount of content that has been already covered...as I've mentioned before, I am happy to meet with you in person to discuss your continued concerns. I can make myself available either before or after school to accommodate your schedule....

20. Parents' Hearing Request received on December 19, 2017, raised the following claims: a) that Hopkinton did not provide the same education to Student as it provided his non-disabled students in violation of §504 "and Free Access to a Public Education (FAPE)"⁵;
21. According to Parents, at Hopkinton High School students cannot self-register for Honors and Advanced Placement level classes. Hopkinton relies on the determination of a single teacher's recommendation. When the teacher does not recommend the student for the Honors or AP level classes there is an override process.
22. Sometime during the second semester of the 2016-2018 school year Student completed his 2017-2018, grade 10, scheduling course sheet. He requested to be registered for Honors level Spanish III, English 10 and U.S. History and Government: Part I, ALL level for Geometry and AP level Biology. His teachers recommended him for all courses except for AP Biology.
23. Student scored in the 90th percentile on the SSAT.
24. In 2013 Student took the English Language Arts (ELA) and Mathematics (Math) MCAS obtaining a score of 258, Proficient level in ELA and 260 Advanced level in

⁵I note that FAPE stands for a Free Appropriate Public Education under both the IDEA and §504 of the Rehabilitation Act of 1973, not "Free Access Public Education".

Math, and 250, Proficient level in Science and Technology. In the 2014 MCAS he scored 266, Advanced level in ELA and 264, Advanced level in Math. In the 2015 MCAS he scored 246, Proficient level in ELA and 264, Advanced level in Math. To date, Student has completed all of his MCAS without accommodations.

25. During the 2014-2015 school year Student's grades ranged from 84 (Progressive Leadership) to 100 (Drama) clustering in the mid 90s for most courses except for Honors Math in which he obtained an 86.⁶
26. During the 2016-2017 school year, ninth (9th) grade, Student received the following grades: B+ in both semesters of 9th grade Wellness; A- in Accelerated Algebra I first semester and B+ in the second semester; B in the first semester Honors English 9 and B+ for second semester; B+ Honors Intro to Chemistry; B Honors Intro to Physics; B+ in first and in second semesters Honors Moderns World History; A in first semester of Spanish II and A+ in the second semester; A+ in Symphonic Band for the first semester and A for second semester; and a Pass in "Freshman Guid" Seminar.
27. During the first semester of the 2016-2017 school year, tenth grade, Student earned the following grades: A in 10th grade Wellness; B+ in Accelerated Geometry; A in Concert Band; A- in Honors Biology; B in Honors English; B+ in Spanish; and A+ in Honors US History & Government.
28. Student's Section 504 meeting convened on October 17, 2017. Student was found eligible to receive accommodations due to his ADHD diagnosis which was found to substantially limit a major life activity, learning. A Section 504 plan to be reviewed yearly, was drafted offering Student the following accommodations to be implemented by the classroom teacher:
 - ! Seating close to instruction.
 - ! Up to 50% additional time on tests and quizzes as needed.
 - ! Provide organizational supports such as guidelines for breaking down multi-step assignments and projects cues to help [Student] prioritize assignments, and clear instructions regarding the process for turning in assignments.
29. Parents accepted Student's Section 504 plan on October 24, 2018.
30. At present, Student continues to attends Hopkinton High School where his weighted GPA is 4.0092 and unweighted GPA 3.5714.

⁶ The 2015-2016 school year grades were not available but the Parties agree that Student performed well during that school year.

31. Parents assert that Hopkinton has made misstatements of fact regarding the availability of spots for participation in the AP Biology for the 2018-2019 school year, and that it had continued to “harass and disparage” Student and his Parents.
32. As a result of the alleged transgressions against Student, Parent seeks public funding for Student to attend a private, general education program of his choosing for his junior (2018-2019) and senior (2019-2020) years. Student has been accepted at Worcester Academy, St. Andrews and St. George’s School, and he has been waitlisted at St. Mark’s and Portsmouth Abbey.

II. Legal Standards

Pursuant to the *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3) and Rule XVII A and B of the BSEA *Hearing Rules for Special Education Appeals*, a hearing officer may allow a motion to dismiss if the party requesting the hearing fails to state a claim upon which relief can be granted. This rule is analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure and as such hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim.

Specifically, what is required to survive a motion to dismiss “are factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”⁷ In evaluating the complaint, the hearing officer must take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff’s favor.”⁸ These “[f]actual allegations must be enough to raise a right to relief above the speculative level . . . [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact). . . .”⁹

Here, BSEA jurisdiction is grounded in the IDEA¹⁰, M.G.L. c.71B¹¹, and Section 504 of the Rehabilitation Act of 1973, as the matter involves a dispute regarding the alleged denial by Hopkinton of a free, appropriate, public education to Student based on discrimination and failure to meet its child find obligations regarding Student.

In order to withstand a motion to dismiss, the hearing officer must be able to grant relief consistent with those statutes and regulations. See *Calderon-Ortiz v. LaBoy-Alvarado*,

⁷*Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

⁸*Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995).

⁹*Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted).

¹⁰The IDEA expressly grants special education Hearing Officers jurisdiction over issues relating to “the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child”. 20 U.S.C. §1415(b)(6)(A).

¹¹Massachusetts law, grants the BSEA jurisdiction to hold adjudicatory hearings to resolve “disputes between and among parents, school districts, private schools and state agencies concerning: (i) any matter relating to the identification, evaluation, education program or educational placement of a child with a disability or the provision of a free and appropriate public education to the child arising under this chapter and regulations promulgated hereunder or under the Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq., and its regulations; or (ii) a student’s rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, and its regulations. M.G.L. ch. 71B, § 2A(a).

300F.3d 60 (1st Cir. 2002); *Whitinsville Plaza Inc. v. Kotseas*, 378 Mass. 85, 89 (1979); *Nader v. Cintron*, 372 Mass. 96, 98 (1977); *Norfolk County Agricultural School*, 45 IDELR 26 (2005). However, if the facts raised by the party opposing the motion to dismiss (herein Parents) raise even the plausibility of a viable claim giving rise to some form of relief under any of the aforementioned statutes, the case may not be dismissed. See, *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948 (2009).¹² With this guidance I turn to the case at bar.

III. Discussion:

Hopkinton seeks dismissal of Parents' claims, on the basis that Student was denied admission to AP Biology several months before he was deemed to be a "handicapped" student pursuant to Section 504 and placed on an accommodation plan. Hopkinton asserts that since Student was a general education student accessing general education courses with strict requirements for admission, the issues raised by Parents in their hearing request involving Student's exclusion from AP Biology fall outside the purview of the BSEA. Hopkinton further argues that to the extent that Parents seek to set aside the statute of limitations applicable to IDEA cases (as adopted by the BSEA in matters involving section 504) those claims should be dismissed with prejudice. Hopkinton further denies that it discriminated against Student whose GPA is extremely high and denies that it had any reason to suspect that Student presented with a disability or that he was denied a FAPE. Hopkinton asserts that Parents failed to state a claim upon which relief can be granted in their Hearing Request and seek dismissal of the case.

Here, Parents' claims involve allegations of child find violations, a denial of FAPE arising from said violation, and discrimination against a student with a disability. These issues fall within the purview of the BSEA.

It would appear that the basis for Hopkinton's Motion to Dismiss is its view that Parents may not be able to prove their case at Hearing. This however, is not the standard on a motion to dismiss. As long as a parent is able to articulate a plausible claim, the case may not be dismissed even if that parent is unlikely to prevail at Hearing.

Looking at the factual allegations and claims raised by Parents in their Hearing Request, treating them as true and viewing these averments in the light most favorable to Parents, I find that Parents have articulated sufficient reasons why they may plausibly have a cause of action and may therefore, proceed with their claims regarding child find and denial of FAPE. Next, during the oral argument offered during the motion session Parents suggested that in entering a determination as to whether Student was denied a FAPE, the Hearing Officer should compare Student to his intellectually, high performing peers. I note that the standard of comparison on a Section 504 claim is not Student's intellectual peers, as Parents suggest, but rather the universe of students his age/grade. Parents are further reminded that they carry the burden of persuasion at Hearing.

¹² Denying dismissal if "accepting as true all well-pleaded factual averments and indulging all reasonable inference in the plaintiff's favor...recovery can be justified under any applicable legal theory". *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948 (2009).

Also, to the extent that Parents seek a determination from the BSEA regarding alleged systemic violations by Hopkinton, Parents are advised that the BSEA deals with issues involving individual students, not systemic complaints. The latter fall squarely within the purview of the Massachusetts Department of Elementary and Secondary Education (DESE). As such, Parents may bring systemic complaints involving Hopkinton to the Problem Resolution System at the DESE once the BSEA matter is completed.

Lastly, in its February 6, 2018, response to Parent's objections to Hopkinton's Motion to Dismiss, Hopkinton requested dismissal with prejudice of all claims raised by Parents falling outside the IDEA Statute of Limitations¹³ applicable to Section 504 claims.

Specifically, Hopkinton sought dismissal of any claims alleged to have occurred while Student was in pre-kindergarten and during fifth grade as falling outside the two year statute of limitations and not meeting either of the exceptions under the IDEA statute of limitations. I note that numerous previous Decisions/Rulings by the BSEA have adopted the two (2) year statute of limitations in cases involving Section 504.

If Parents seek to introduce the information to support their position that Hopkinton had been on notice of Student's disabilities since pre-kindergarten and/or fifth grade, Parents may briefly present this information at Hearing. Parents' submissions are not clear that Parents intend anything further. If Parents seek to have the two (2) years statute of limitations tolled because one of the exceptions applies to them, this position is not evident from the pleadings and thus, must be clarified. Parents are granted the opportunity to clarify their position by the close of business on April 17, 2018 after which Hopkinton may file its response/objections. The Parties are placed on notice that if Parents seek to set aside the two year statute of limitations made applicable to Section 504 claims, any determination by this Hearing Officer will involve a Hearing on the Motion during which testimony and documentary evidence will be required. Any Hearing involving a set-aside of the statute of limitations and a decision on this issue will be required prior to a Hearing on the merits regarding Parents' additional claims.

In sum, Hopkinton's Motion to Dismiss is DENIED in Part as Hopkinton's Motion to Dismiss all claims falling outside the two (2) year statute of limitations is SET ASIDE pending further clarification by Parents.

ORDERS:

1. Hopkinton's Motion to Dismiss is DENIED in Part. Hopkinton's Motion to Dismiss all claims falling outside the two (2) year statute of limitations is SET ASIDE.
2. Parents may proceed to Hearing on the following issues:

! Whether Hopkinton fulfilled its child find requirements/mandate;

¹³ See 20 U.S.C. §1415(f)(3)(C) adopted in Massachusetts pursuant to 603 CMR 28.01(2).

- ! Whether Hopkinton knew or should have known that Student was a child with a disability consistent with Section 504 of the Rehabilitation Acts of 1973;
 - ! Whether Hopkinton discriminated against Student on the basis of a qualifying disability by preventing him from taking AP biology during the 2017-2018 school year;
 - ! Whether Student's inability to access AP biology during the 2017-2018 school year constitutes a denial of FAPE;
 - ! Whether Student is entitled to public funding for an out of district placement.
3. By the close of business on April 17, 2018, Parents shall inform the Hearing Officer whether the issues as framed by the Hearing Officer constitute all the issues for Hearing.
 4. Parents shall clarify their position regarding a set aside of the two year statute of limitations by the close of business on April 17, 2018. Hopkinton's response/objections shall be filed by the close of business on April 27, 2018. If a Hearing on the statute of limitations is required, this will be held on May 1, 2018, a date already set aside for the Hearing in this matter.

So Ordered By the Hearing Officer,

Rosa I. Figueroa
Dated: April 9, 2018