

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: CP-259-2008  
COMPLAINT INVESTIGATOR: Sandie Scudder  
DATE OF COMPLAINT: September 17, 2007  
DATE OF REPORT: October 15, 2007  
REQUEST FOR RECONSIDERATION: No  
DATE OF CLOSURE: October 29, 2007

**COMPLAINT ISSUES:**

Whether the Elkhart Community School Corporation and the Elkhart Community Schools violated:

511 IAC 7-27-7(a) by failing to implement the Student's individualized education program (IEP) as written, specifically by failing to provide adult supervision and notifying the parent before the Student left school property.

**FINDINGS OF FACT:**

1. The Student, 12 years old, is identified as a student with autism, and has been determined eligible for special education and related services.
2. On September 11, 2007, the physical education teacher escorted the Student's 6<sup>th</sup> grade class to a park located across the street from the Student's School for a timed mile run.
3. The IEP dated February 12, 2007, stated that "Support will be provided for out of school trips and special activities." The IEP also stated that for the Student's safety, "all transitions from activity to activity will be supervised throughout his school day." The IEP does not define what constitutes "support" and "supervision". However, the School acknowledged that on September 11, 2007, the Student participated in a planned physical education activity outside of the school without assigned supervision.
4. On September 12, 2007, a meeting was convened to discuss the September 11, 2007, incident, with the parent, principal, special education teacher, intense intervention supervisor and the autism consultant. The Complainant alleged that she was not notified that the Student would be leaving school property. The meeting notes dated September 12, 2007, indicated that the physical education teacher sent notices home to parents regarding the scheduled activity. The IEP dated February 12, 2007, states that "[t]he student will be able to participate in all educational programs and activities that are made available to non-disabled students. Participation in activities offered to the class will be at parent discretion."

**CONCLUSIONS:**

1. Finding of Fact #3 indicates that the School failed to provide special supervision for the Student during a physical education activity occurring off school property on September 11, 2007, as required by the IEP dated February 12, 2007. Therefore, a violation of 511 IAC 7-27-7(a) is found.
2. Finding of Fact #4 indicates that the Student's IEP states that "[p]articipation in activities

offered to the class will be at parent discretion.” Finding of Fact #4 indicates that the physical education teacher sent notices to all parents regarding the planned activity on September 11, 2007. However, the Complainant alleged that she did not receive the notice, and there is no documentation that the Student participated in the activity at the Complainant’s discretion. Moreover, the language in the IEP regarding this issue is not specific, and the IEP contains no provision as to how and to what extent the Student’s participation in activities would be at the parent’s discretion. The IEP contained ambiguous language that resulted in misinterpretation and misunderstandings between the School and the Complainant. Where an ambiguity exists in an IEP, the ambiguity will be construed against the School that is responsible for its development and implementation. IEPs must have sufficient clarity so that both the parents and school personnel understand what services a student is to receive. As a result, a violation of 511 IAC 7-27-7(a) is found.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

The Elkhart Community School Corporation and the Elkhart Community Schools must convene a CCC meeting in order to eliminate ambiguity in the IEP regarding the requirements for the Student to participate in planned school events off of school property. The School shall submit the following to the Division **no later than October 31, 2007:**

A copy of the CCC Report/IEP, including discussion and determinations decided by the CCC regarding:

- How the parent will be notified of planned events occurring off of school property; and
- How the Student will be supervised during planned events occurring off of school property.