

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 23 D.o.E. App. Dec. 299)**

In re Hon Kwan

Marquette Catholic High School,	:	
Appellant,	:	
vs.	:	
	:	DECISION
Iowa High School Athletic Association,	:	
Appellee.	:	[Adm. Doc. #4619]

This matter was heard telephonically on September 23, 2004, before Carol J. Greta, designated administrative law judge¹, presiding on behalf of Judy A. Jeffrey, Director of the Iowa Department of Education.

The Appellant, Marquette Catholic High School [herein “the School”], was represented by Principal James Squires and Activities Director Ray Kubik. The Appellee, Iowa High School Athletic Association [herein “IHSAA”] was represented by Assistant Executive Directors David Anderson and Alan Beste. Also present were Hon and his host mother, Sue Becker. Neither party was represented by legal counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281— IAC [Iowa Administrative Code] 6. Jurisdiction for this appeal is pursuant to Iowa Code § 280.13 and 281—IAC 36.17. The administrative law judge finds that she and the Director of the Department of Education have jurisdiction over the parties and subject matter of this appeal.

The School seeks reversal of a decision that the IHSAA Board of Control made on September 1, 2005, that Hon is ineligible to compete in interscholastic athletics for 90 consecutive school days under the provisions of the general transfer rule, 281—IAC 36.15(3).

**I.
FINDINGS OF FACT**

Hon Kwan is a 17 year old citizen of Korea who is attending his third consecutive school year in Iowa. In the 2003-04 school year, Hon lived with a host family and attended Maquoketa (public) High School on a J-1 visa. He returned to Korea for the summer of 2004.

¹ Judge Greta is the Iowa Department of Education’s liaison to the Board of Control of the Iowa High School Athletic Association, a non-voting position. She deliberately was not present when the IHSAA Board discussed and voted on this eligibility matter. Her membership on that Board was fully disclosed to the Appellant in writing prior to this hearing, as well as on the record at the beginning of the hearing.

Hon returned to Iowa on an F-1 visa to attend Marquette Catholic High School for the 2004-05 school year. The School allowed Hon to participate in interscholastic athletics that year. The School did not file an application for approval for foreign exchange student eligibility with the IHSAA. At the end of the 2004-05 school year, Hon again returned home to his family in Korea.

This (2005-06) school year, Hon is living with a different host family – the Beckers – in Iowa, has his F-1 visa, and continues in attendance at Marquette Catholic High School. The School did file the application for approval for foreign exchange student eligibility this past August, bringing Hon’s presence to the attention of the IHSAA for the first time.

The administration of the IHSAA sent a letter to the School on August 24, which stated that, under the general transfer rule, “Han would be ineligible for interscholastic athletic competitions for 90 consecutive school days, beginning on his first day of enrollment at Marquette Catholic High School.” After the IHSAA Board of Control affirmed management’s decision, the IHSAA again sent a letter to the School, stating in part, “Hon should have been ineligible for the first 90 school days of attendance during the 2004-05 school year, which would have taken care of his ineligibility under the general transfer rule.”

II. CONCLUSIONS OF LAW

The general transfer rule, 281—IAC 36.15(3), states:

36.15(3) *General transfer rule.* A student who transfers from one member or associate member school to another member or associate member school shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days, as defined in 281—subrule 12.1(8), exclusive of summer enrollment, unless one of the exceptions listed in paragraph 36.15(3)“a” applies. ...

a. Exceptions. The executive officer or executive board shall consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten days:

...

- (4) Pursuant to Iowa Code section 256.46, a student whose residence changes due to any of the following circumstances is immediately eligible provided the student meets all other eligibility requirements in these rules and those set by the school of attendance:

...

3. Participation in a foreign exchange program recognized by the school of attendance.

The exception in 36.15(3)“a”(4)“3” explains why Hon was immediately eligible upon his first transfer to Iowa under his J-1 visa. J-1 visas are limited to foreign students who participate in approved exchange programs. They are valid for one year only. 8 U.S.C. section 101(13); 22 C.F.R. sections 62.1, 62.25.

Foreign students on F-1 visas are in the United States legally, but are not *exchange* students. 22 C.F.R. section 62.1(b). The exception for immediate eligibility to participate in interscholastic athletics is limited by Iowa Code section 256.46 to a child who “is a foreign exchange student.”

In this case, however, Hon is no longer a transfer student. The IHSAA’s letters correctly stated the penalty. Hon should have been ineligible for the first 90 school days of the 2004-05 school year. There is no authority in chapter 36 to impose the ineligibility at this point. The penalty to be imposed at this point is against the member school. The record shows that the Board of Control reprimanded the School. There is nothing more that can be done at this point.

III. DECISION

For the foregoing reasons, the September 1, 2005 decision of the Board of Control of the Iowa High School Athletic Association that Hon Kwan is ineligible to compete in interscholastic athletics at Marquette Catholic High School for a period of 90 consecutive school days is **REVERSED**. There are no costs associated with this appeal to be assigned to either party.

Date

It is so ordered.

Carol J. Greta, J.D.
Administrative Law Judge

Date

Judy A. Jeffrey, Director
Iowa Department of Education