

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY****AIDEN VASQUEZ and MIKA  
COVINGTON,****Petitioners,****vs.****IOWA DEPARTMENT OF HUMAN  
SERVICES,****Respondent.****Case No. CVCV061729****RULING ON PETITIONERS' MOTION  
TO RECONSIDER**

On August 23, 2021, Petitioners filed a Motion to Reconsider asking the Court to reconsider part of its August 10, 2021 ruling, which granted in part and denied in part Respondent's Motion to Dismiss. Hearing was held on the Motion to Reconsider on September 29 2021. Seth Horvath argued for Petitioners and Samuel Langholz argued for Respondent. Respondent did not file a written resistance and rested on its oral argument at hearing. Having considered the Motion and arguments of both parties, the Court now enters the following ruling.

**I. LEGAL STANDARDS.**

The Iowa Supreme Court has "long recognized that a district court as the power to correct its own perceived errors, so long as the court has jurisdiction of the case and the parties involved. Until the district court has rendered a final order or decree, it has the power to correct any of the rules, order or partial summary judgments it has entered." *Carrol v. Martir*, 610 N.W.2d 850, 857 (Iowa 2000) (internal quotations and citations omitted).

**II. MERITS.**

Petitioners contend the Court erred in its August 10, 2021 ruling in (1) addressing Respondent's administrative exhaustion argument because Respondent did not assert such argument below, and (2) concluding Petitioners had to exhaust administrative remedies before the

Iowa Civil Rights Commission (ICRC) in order to pursue their Iowa Civil Rights Act (ICRA) (Iowa Code chapter 216) claims against Respondent.

First, the issue of whether a party failed to exhaust their administrative remedies is jurisdictional. *See Simpson v. Iowa Dep't of Job Serv.*, 327 N.W.2d 775, 777 (Iowa Ct. App. 1982) (discussing whether the court lacked subject matter jurisdiction because petitioners failed to exhaust their administrative remedies by not filing an application for rehearing with the agency pursuant to Iowa Code section 96.6(8) (1981)). Subject matter jurisdiction cannot be established by consent, waiver or estoppel, but rather is a matter of statute. *Cunningham v. Iowa Dep't of Job Serv.*, 319 N.W.2d 202, 204 (Iowa 1982).

The question whether a court has subject matter jurisdiction may be raised at any time and is not waived even by consent. We determine subject matter jurisdiction issues even though the parties have not raised them. Additionally, we examine the grounds for subject matter jurisdiction on our own motion before we proceed further. *Id.* When we determine subject matter jurisdiction is lacking, the only appropriate disposition is to dismiss the custody petition.

*In re Jorgensen*, 627 N.W.2d 550, 554–55 (Iowa 2001) (citations omitted).

Accordingly, the Court clarifies its prior ruling to expressly conclude Respondent did not waive or forfeit its argument regarding exhaustion of administrative remedies by not raising it below. Thus, the Court reaffirms the propriety of it considering such claim.

Second, Petitioner argues that the holdings in *Hollinrake v. Monroe County*, 433 N.W.2d 696 (Iowa 1988) and *Chiavetta v. Iowa Bd. of Nursing*, 595 N.W.2d 799 (Iowa 1999), allow them to not have to file and exhaust their administrative remedies with the ICRC. In *Hollinrake*, the Iowa Supreme Court held that a civil rights complaint against the Iowa Law Enforcement Academy, based on its vision requirements for certifying peace officers, should have been brought under Iowa Code chapter 17A rather than chapter 216 (the ICRA). *Hollinrake*, 433 N.W.2d at 699. The court so held because *Hollinrake*'s challenge was "directed at the agency's action in carrying out

its statutory duty to enact a rule” and the Academy was acting on “legislatively prescribed authority.” *Id.* *Hollinrake* “clearly sets out an exception to the general rule of section [216.16(1)] that all civil rights complaints must proceed through the Commission.” *Polk City Secondary Rds. v. Iowa Civ. Rts. Comm’n*, 468 N.W.2d 811, 818 (1991). The Iowa Supreme Court further clarified the *Hollinrake* exception by stating, in *Hollinrake* “[w]e held that the proper means of contesting the agency’s rule was under chapter 17A because the allegedly discriminatory rule was one which the agency was required to make under Iowa law.” *Id.* In *Chiavetta*, the Iowa Supreme Court held that *Hollinrake* involved a civil rights challenge to the “agency rule making authority” and that such a “direct attack on the agency’s statutory authority must be confined to chapter 17A.” *Chiavetta*, 595 N.W.2d at 803.

The exclusivity provision of the administrative procedure act, Iowa Code section 17A.19, states in pertinent part:

Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of [chapter 17A] shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action.

This prevails “unless the other statute expressly provides that it shall take precedence over all or some specified portion of this named chapter.” Iowa Code § 17A.23(1). However, the legislature has “expressly carved out an exception to this administrative framework for actions commenced under Iowa Code section 216.16(1). . . . And the civil rights statute, by its terms, applies ‘notwithstanding’ otherwise controlling provisions of the administrative procedures act.” *Chiavetta*, 595 N.W.2d at 802.

Thus, chapter 216 provides an exception to 17A’s exclusivity provision for civil rights actions and that such actions must be brought under the provisions of the ICRA and through the ICRC. The *Hollinrake* exception, then, is an exception to that exception. When, and only when,

there is a challenge to an allegedly discriminatory rule which the agency was required to make under Iowa law a party must bring their claims of discrimination under 17A.

Here, Petitioner has not alleged or provided any evidence there was a law that required Respondent to enact the allegedly discriminatory regulation or what law required it to enact the regulation at issue. Nor is the Petitioner challenging Respondent's statutory authority to make the regulation, only that the regulation at bar is discriminatory. Accordingly, the Court clarifies its prior ruling to expressly conclude the *Hollinrake* exception is inapplicable here. The Court affirms its prior ruling that Petitioners were required to first file a complaint with the ICRC with regard to their claims that Respondent violated the ICRA in order to exhaust their administrative remedies. They did not do so here. It is also noted that Respondent's previous argument in an appellate brief in a different case is of no precedential or controlling value on this Court in the present action. Therefore, the Court once again concludes that any and all claims Petitioners have asserted under Counts II and III that allege a violation of Iowa Code chapter 216 are properly dismissed.

### **III. CONCLUSION AND ORDER.**

After again considering all of the parties' arguments, a thorough review of the entire record, and for all of the reasons set forth above, the Court affirms its prior Ruling on Petitioners' Motion to Dismiss as clarified herein. Petitioners' Motion to Reconsider is **DENIED**.



State of Iowa Courts

**Case Number**  
CVCV061729

**Case Title**  
AIDEN VASQUEZ V IOWA DEPARTMENT OF HUMAN  
SERVICES  
OTHER ORDER

**Type:**

So Ordered

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William P. Kelly, District Court Judge,  
Fifth Judicial District of Iowa

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