

FILED _____

ENTERED _____

2012 DEC - 13 P 2:12

THOMAS M. MARTWELL
CIRCUIT COURT CLERK
KANE COUNTY, IL

**IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL DISTRICT
KANE COUNTY, ILLINOIS**

MOOSEHEART CHILD CITY & SCHOOL,)
INC.,)

Plaintiff,)

v.)

ILLINOIS HIGH SCHOOL ASSOCIATION,)

Defendant.)

Case No. 12 MR 661

Honorable Judge David Akemann

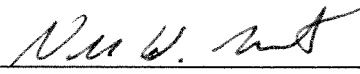
NOTICE OF FILING

To: David J. Bressler
Dykema Gossett PLLC
4200 Commerce Court
Suite 300
Lisle, Illinois 60532

PLEASE TAKE NOTICE that on this 7th day of December, 2012, we caused to be filed with the Circuit Court of Kane County the attached Affidavit of Nicholas W. Marietti, which is hereby served upon you.

Dated: December 7, 2012

MOOSEHEART CHILD CITY & SCHOOL, INC.

By: 
One of Its Attorneys

Peter G. Rush
Paul J. Walsen
Todd E. Pentecost
K&L Gates LLP
70 West Madison Street, Suite 3100
Chicago, IL 60602-4207
Tel.: (312) 372-1121
Fax: (312) 827-8000

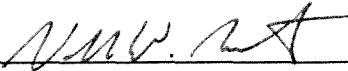
Timothy M. McLean
Kenneth J. Vanko
CLINGEN, CALLOW & MCLEAN LLC
501 West State Street, Suite 203
Geneva, Illinois 60134
Tel.: (630) 938-4769

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused a true and correct copy of the foregoing Notice of Filing to be served upon:

David J. Bressler
Dykema Gossett PLLC
4200 Commerce Court
Suite 300
Lisle, Illinois 60532

by electronic mail, this 7th day of December, 2012.



Nicholas W. Marietti

FILED _____

ENTERED _____

2012 DEC 11 P 2:12

THOMAS HARTWELL
CIRCUIT COURT CLERK
KANE COUNTY, IL

**IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL DISTRICT
KANE COUNTY, ILLINOIS**

MOOSEHEART CHILD CITY & SCHOOL,)
INC.,)

Plaintiff,)

v.)

ILLINOIS HIGH SCHOOL ASSOCIATION,)

Defendant.)

Case No. 12 MR 661

Hon. David R. Akemann

AFFIDAVIT OF NICHOLAS W. MARIETTI

Nicholas W. Marietti hereby certifies and states as follows:

1. I am over the age eighteen, have personal knowledge of the facts contained in this Affidavit and can testify competently thereto if called as a witness.

2. I am one of the attorneys for Plaintiff Mooseheart Child City & School, Inc. ("Mooseheart" or "Plaintiff") in the action captioned *Mooseheart Child City & School, Inc. v. Illinois High School Association*, Case No. 12 MR 661, which was filed on December 3, 2012 in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois.

3. Attached to this Affidavit as Exhibit A is a true and correct copy of email correspondence between counsel for Defendant Illinois High School Association ("IHSA") and counsel for Mooseheart.

4. Attached to this Affidavit as Exhibit B is a true and correct copy of correspondence from the Executive Director of the IHSA to Mooseheart dated December 5, 2012.

5. Attached to this Affidavit as Exhibit C is a true and correct copy of Mooseheart's December 6, 2012 response to the Executive Director's December 5, 2012 correspondence.

6. Attached to this Affidavit as Exhibit D is a true and correct copy of Mooseheart's December 7, 2012 correspondence in further response to the Executive Director's December 5, 2012 correspondence.

7. Attached to this Affidavit as Exhibit E is a true and correct copy of the IHSA Board's final decision on eligibility regarding Deng Agouc, dated October 12, 2010.

8. Attached to this Affidavit as Exhibit F is a true and correct copy of correspondence from Mr. Kurt Gibson to Mooseheart, dated June 7, 2012.

9. Attached to this Affidavit as Exhibit G is a true and correct copy of the text of Mooseheart's July 3, 2012 response to Mr. Gibson's June 7, 2012 correspondence.

10. Attached to this Affidavit as Exhibit H is a true and correct copy of Mr. Gibson's July 19, 2012 response to Mooseheart's July 3, 2012 correspondence.

11. Attached to this Affidavit as Exhibit I is a true and correct copy of a press release dated November 28, 2012, published on the website of Hinckley-Big Rock Community Unit School District #429. I obtained Exhibit I on December 6, 2012 by visiting the Hinckley-Big Rock Community Unit School District #429 website at www.edline.net/pages/Hinckley-Big_Rock_CUSD_429, where Exhibit I was available for viewing and printing as a pdf.

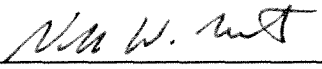
12. On December 7, 2012, at 9:15 a.m., I returned to the Hinckley-Big Rock Community Unit School District #429 website at www.edline.net/pages/Hinckley-Big_Rock_CUSD_429, and was unable to re-locate the press release dated November 28, 2012 attached as Exhibit I hereto.

13. Attached to this Affidavit as Exhibit J is a true and correct copy of the biography of Kurt Gibson published by the IHSA on its website. I obtained Exhibit J on December 6, 2012

by visiting the IHSA website at www.ihsa.org/AbouttheIHSA/AdministrativeSupportStaff/KurtGibson.aspx, where Exhibit J was available for viewing and printing.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: December 7, 2012



Nicholas W. Marietti

Exhibit A

From: Rush, Peter
Sent: Wednesday, December 05, 2012 2:13 PM
To: Bressler, David J.; T. Michael Leuer (mleuer@mooseintl.org) (mleuer@mooseintl.org); Timothy M. McLean
Subject: RE: IHSA Board Hearing

Dave -

Thank you for scheduling the hearing before the IHSA Board on December 10, at 1:00. Mooseheart will be there. Thank you for putting us last.
In response to your offer, Mooseheart would request the following in advance of hearing, and by the end of the day December 7, 2012:

- (a) Any materials delivered to the Board for the hearing;
- (b) A copy of the investigative file of the IHSA on the matter;
- (c) All communications between the IHSA and Hinckley-Big Rock since February 1, 2012; and
- (d) Any other evidence to be used at the hearing.

At this time we do intend to swear witnesses and ask that the IHSA make Mr. Gibson available to be so sworn on Monday. We will need a court reporter for that purpose. Mooseheart understands your email on this point, but nevertheless requests that the IHSA permit that Mooseheart be allowed to bring a court reporter and will have such a reporter present. Finally, Mooseheart requests that the hearing be open.

Thanks.

Pete

K&L GATES

Peter G. Rush
Partner
K&L Gates LLP
70 West Madison Street
Suite 3100
Chicago, IL 60602
Phone: 312.807.4352
Fax: 312.827.8005
peter.rush@klgates.com
www.klgates.com

From: Bressler, David J. [mailto:DBressler@dykema.com]
Sent: Wednesday, December 05, 2012 11:48 AM
To: Rush, Peter; T. Michael Leuer (mleuer@mooseintl.org) (mleuer@mooseintl.org); Timothy M. McLean
Subject: IHSA Board Hearing

All,

I have confirmed that the IHSA Board hearing on the Mooseheart matter will begin at 1:00 pm Monday at the IHSA offices in Bloomington. It is the last hearing of the day so although 1/2 hour is typically allotted for each hearing, you will have whatever time you need to present the matter to the board.

The IHSA does not permit court reporting of its proceedings. (I apologize that I indicated I thought one would be permitted. They are adamant on this point as past experience has found it to be disruptive of

12/6/2012

the proceedings. Moreover the judge did state he would not require it.) As I stated before, the meeting is taped (they actually have a very good system with mics everywhere, and the resolution is excellent) and the tape is available for a very small fee. You are free to swear witnesses if you choose, though it is not done as a matter of course under the Board's procedures.

If there is anything else that you require in advance of the meeting or you have any questions, please let me know.

David J. Bressler

Dykema

4200 Commerce Court, Suite 300

Lisle, Illinois 60532

dbressler@dykema.com

www.dykema.com

630-577-2824

866-261-2446 (direct fax)

*** Notice from Dykema Gossett PLLC: To comply with U.S. Treasury regulations, we advise you that any discussion of Federal tax issues in this communication was not intended or written to be used, and cannot be used, by any person (i) for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service, or (ii) to promote, market or recommend to another party any matter addressed herein. This Internet message may contain information that is privileged, confidential, and exempt from disclosure. It is intended for use only by the person to whom it is addressed. If you have received this in error, please (1) do not forward or use this information in any way; and (2) contact me immediately. Neither this information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message. DYKEMA

Exhibit B



The IHSA governs the equitable participation in interscholastic athletics and activities that enrich the educational experience.

December 5, 2012

Mr. Mark Johnson
Official Representative
Mooseheart High School
255 James J Davis Dr.
Mooseheart, IL 60539

Dear Mr. Johnson:

This will acknowledge receipt of correspondence we received to request a hearing before the IHSA Board of Directors, pursuant to IHSA Constitution 1.460. That hearing is to consider an appeal of the eligibility ruling, that under the provisions of IHSA By-laws 3.070 and its subsections and 6.010 and its subsections, Mangisto Deng, Makur Puou, Hakim Nyang and Wal Khat are ruled ineligible to participate in interscholastic athletics at Mooseheart High School permanently.

The hearing before the Board of Directors has been scheduled for 1:00 p.m., on Monday, December 10, 2012. You may present such witnesses and evidence as you deem relevant. Please provide me with the names of any witnesses who will testify on your behalf, together with copies of any documentation or exhibits you wish to present, prior to the hearing. The additional information may be emailed or faxed to the IHSA Office.

Please note that in addition to the Board of Directors, IHSA administrative staff members and Liaison members to the Board will also be in attendance at the hearing.

Should you have any questions concerning the foregoing, please do not hesitate to contact me. Please confirm receipt of this hearing notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Hickman", is written over the typed name.

Martin L. Hickman, Ed.D.
Executive Director

MLH:tb

Exhibit C

-----Original Message-----

From: Mark Johnson

Sent: Thursday, December 06, 2012 8:39 AM

To: 'Marty Hickman'; 'dklett@d118.org'; 'mgardner@lw210.org'; 'jqaid@marmion.org'; 'gbradley@decaturchristian.net'; 'margarethayes@mariahighschool.org'; 'tmccconnell@erie1.info'; 'adreons@mfschools.org'; 'nagelchu@ep309.org'; 'kejones@clinton.k12.il.us'; 'dpitts@bethalto.org'; 'nuckolij@illinois.edu'

Subject: RE: hearing notice

Dear Dr. Hickman:

Thank you for your hearing notice of December 5, 2012, and for scheduling a hearing before the IHSA Board on Monday, December 10, 2012.

In response to your inquiry about the documentation or exhibits we wish to present, we attach the following:

1. The Affidavit of Mark Adams;
2. The Affidavit of Ron Ahrens;
3. The Affidavit of Scott Hart;
4. The Affidavit of Kyle Rife;
5. The Affidavit of Gary Urwiler;
6. The June 7, 2012 letter of the IHSA; and
7. The July 19, 2012 email of the IHSA.

As to witnesses, we intend to call Scott Hart, Ron Ahrens and Kurt Gibson.

Again, thank you for your consideration.

-----Original Message-----

From: Marty Hickman [mailto:MHickman@ihsa.org]

Sent: Wednesday, December 05, 2012 1:15 PM

To: Mark Johnson

Cc: Dave Bressler; Gary Urwiler

Subject: hearing notice

Mr. Johnson,

Please see the attached and confirm receipt.

Sincerely,

Marty Hickman, Ed.D
Executive Director



12/6/2012

Disclaimer: This e-mail message is strictly confidential to the Illinois High School Association and is intended only for the addressee. It may contain information that may be confidential, legal, privileged, or otherwise exempt from disclosure under applicable law. If you are not the intended addressee, or someone authorized by the intended addressee to receive transmission on behalf of the addressee, you must not retain, disclose in any form, copy, or take action in reliance on this transmission.

Exhibit D

-----Original Message-----

From: Mark Johnson

Sent: Friday, December 07, 2012 11:58 AM

To: 'Marty Hickman'

Cc: 'dklett@d118.org'; 'mgardner@lw210.org'; 'jqaid@marmion.org'; 'gbradley@decaturchristian.net'; 'margarethayes@mariahighschool.org'; 'tmccconnell@erie1.info'; 'adreons@mfschools.org'; 'nagelchu@ep309.org'; 'kejones@clinton.k12.il.us'; 'dpitts@bethalto.org'; 'nuckolij@illinois.edu'

Subject: RE: hearing notice

Dear Dr. Hickman:

In response to your inquiry about the documentation or exhibits we wish to present next Monday, in addition to the materials previously provided to the IHSA, we attach the following:

1. The IHSA's Board's Decision on the Eligibility of Deng Agouc;
2. Gary Urwiler's July 3, 2012 letter to Kurt Gibson;
3. The November 28, 2012 Hinckley-Big Rock Press Release; and
4. Kurt Gibson's IHSA biography.

We would also like to call the Executive Director as a witness.

Thank you.

-----Original Message-----

From: Marty Hickman [mailto:MHickman@ihsa.org]

Sent: Wednesday, December 05, 2012 1:15 PM

To: Mark Johnson

Cc: Dave Bressler; Gary Urwiler

Subject: hearing notice

Mr. Johnson,

Please see the attached and confirm receipt.

Sincerely,

Marty Hickman, Ed.D
Executive Director

Disclaimer: This e-mail message is strictly confidential to the Illinois High School Association and is intended only for the addressee. It may contain information that may be confidential, legal, privileged, or otherwise exempt from disclosure under applicable law. If you are not the intended addressee, or someone authorized by the intended addressee to receive transmission on behalf of the addressee, you must not retain, disclose in any form, copy, or take action in reliance on this transmission.

Exhibit E



The IHSA governs the equitable participation in interscholastic athletics and activities that enrich the educational experience.

October 12, 2010

Mr. T. Michael Leuer
General Counsel
155 S. International Dr.
Mooseheart, IL 60539-1117

Fax: 630 859-6622

Dear Mr. Leuer:

At its meeting on October 12, 2010, the IHSA Board of Directors deliberated on all the information provided regarding the eligibility of Deng Aguoc at Mooseheart High School.

After carefully examining all the information available in this case, it was the Board's decision to sustain my ruling that Deng Aguoc is ineligible in regard to his transfer to participate in interscholastic athletics until March 20, 2011. The Board determined that Deng Aguoc received an advantage not available to non-athletes and his transfer to Mooseheart was not due to circumstances completely beyond the control of the school, the student's parents or guardian or the schools to and from which the student transferred. Rather, he came to Mooseheart as a result of direct contact made by Mark Adams, the President of the A-Hope Foundation, to Ron Ahrens, Mooseheart's Basketball Coach. A-Hope is not a foreign exchange program approved by IHSA or CSJET. It is notable that as a senior he is an atypical first time Mooseheart student, and that although the transcript provided to the IHSA was incomplete, this is at least the third high school he has attended in the United States (having previously attended school in Birmingham, Alabama, and Mt. Michael in Omaha, Nebraska).

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin L. Hickman".

Martin L. Hickman, Ed.D.
Executive Director

MLH:jw

cc: Mark Johnson, Principal, Mooseheart - Fax: 630 906-3617

Exhibit F



The IHSA governs the equitable participation in interscholastic athletics and activities that enrich the educational experience.

June 7, 2012

Mr. Gary Urwiler
Principal
Mooseheart High School
255 James J Davis Dr.
Mooseheart, IL 60539

Dear Mr. Urwiler,

I wanted to take this belatedly opportunity to thank you and Scott Hart for meeting with me in March concerning the students attending Mooseheart on a F1 Visa. Since our visit, our office has been involved in a legal matter with the Illinois Attorney General over participation opportunities for students with disabilities, and when coupled with the normal administration of my duties, I've found myself unable to follow up with you until this time. For that, I apologize.

As we discussed back in March, the rise of students attending high schools across the country with F1 Visas has become an issue that schools and state associations, our included, are attempting to deal with in an appropriate manner. To that end, I'm writing today to request the following information:

- A listing of those students currently attending Mooseheart High School on a F1 Visa.
- A sample (blank) admissions packet that a student with a F1 Visa would complete to gain admittance into Mooseheart High School.
- Written clarification of how these students (those with F1 Visas) came to the attention of your school.
- Written clarification of how these students (those with F1 Visas) fit into the mission of your school.
- A description of what, if any, fees are required of students who attend Mooseheart High School, and, if so, how those students with F1 Visas meet that financial requirement.

Please send your reply to my attention at the IHSA Office. If you'd rather email the response and any accompanying documents, you can send them to kgibson@ihsa.org. Please send your response no later than June 20, 2012.

Thanks for your attention to this matter. If you have any questions, please contact me at the IHSA Office.

Sincerely,

Kurt J. Gibson
Associate Executive Director

Exhibit G

July 3, 2012

Mr. Kurt Gibson
Associate Executive Director
Illinois High School Association
2715 McGraw Drive
Bloomington, IL 61704

Dear Mr. Gibson,

Our campus is nearing its 100th year celebration of the many students' lives that have been changed because of our services. Since 1913, we have stayed true to our mission of providing a residential / school component facility for children of need. As the largest Residential Child Care Facility in Illinois, we are proud to serve children, who at no fault of their own have experienced some sort of need.

In regard to your request for additional information on June 7th, 2012, we are more than willing to share appropriate and relevant information. However, we are unclear from the correspondence as to the intended goals/reasons for your inquiries, i.e. are we under any type of investigation? If you can provide us with a more detailed explanation as to the necessity and purpose of this information, then we can respond accordingly.

Any further questions or concerns please let me know.

Sincerely,

Gary Urwiler
Superintendent of Education
Mooseheart School

Exhibit H

Subject: FW: IHSA- 8/13 Mooseheart response

Attachments: Reply to IHSA August 2012.doc; ISHA_001.pdf

-----Original Message-----

From: Kurt Gibson [mailto:KGibson@ihsa.org]

Sent: Thursday, July 19, 2012 1:43 PM

To: Gary Urwiler

Cc: Kurt Gibson

Subject: RE: belated follow up

Gary

Certainly if you feel you need more time to respond to the questions asked of you, that's fine. Obviously, the sooner you can respond, the sooner we can get a handle on the situation. In your letter, you ask if the Mooseheart is under "any type of investigation". While I am asking questions relative to foreign students at your school, I would not say that the school itself is under an investigation. At this point, I am still attempting to gather information.

I would add one additional clarification question to those previously asked. It is: can you confirm that Makur Puou, Akim Nyang, Wal Khat, and Mangisto Deng all came to Mooseheart through the A-HOPE Foundation. My notes, as well as the article that had been previously published on the Mooseheart website, indicate such.

Would allowing an extension to August 10th allow for enough time on your end? Please let me know, and we'll work from there.

Thanks,

Kurt J. Gibson
Associate Executive Director, IHSA
309.663.6377
kgibson@ihsa.org

Follow us on ihsa.org, [Facebook](#), or [Twitter](#)

Exhibit I

Hinckley-Big Rock
Community Unit School District #429



One Purpose, One Vision, One District

700 East Lincoln Highway
Hinckley, IL 60520
815-286-7578

November 28, 2012

PRESS RELEASE

This statement represents the position of the Hinckley-Big Rock School District in this matter:

First, to be clear, Hinckley-Big Rock CUSD 429 did not file a complaint with the IHSA against Mooseheart. In fact, the school district does not find itself to be a party to any proceedings between the IHSA and its member institution Mooseheart. The District's involvement dates back to February of 2012 when Mr. Bill Sambrookes, Hinckley-Big Rock coach and Athletic Director, was informed by a group of conference coaches at an all-conference meeting that students on the Mooseheart team were enrolled at Mooseheart pursuant to the A-HOPE program. At this time, Mr. Sambrookes was totally unfamiliar with the A-HOPE program. It was clear from the conversations among coaches, that a number of individuals at this meeting had questions about whether A-HOPE membership met IHSA guidelines as to school enrollment and participation in school activities. As a result, Mr. Sambrookes decided to contact the IHSA about A-HOPE and its effect on participation in IHSA sanctioned activities. This inquiry was made nearly 8 months prior to the start of the current basketball season. Mr. Sambrookes was informed by the IHSA that they were aware of the situation and were currently investigating it.

It was never the intent of the Hinckley-Big Rock School District to attack the student athletes or Mooseheart. Our only intent was in gathering information about the A-HOPE program and the basis for participation in IHSA sanctioned events and activities.

As always, Hinckley-Big Rock School District respects the decision of the court and of the IHSA and intends to be bound by the decisions of both.

Exhibit J

Kurt Gibson

[About the IHSA](#)

[Mission Statement & Beliefs](#)

[Constitution, By-laws & Policies](#)

[Board of Directors](#)

[Legislative Commission](#)

[Advisory Committees](#)

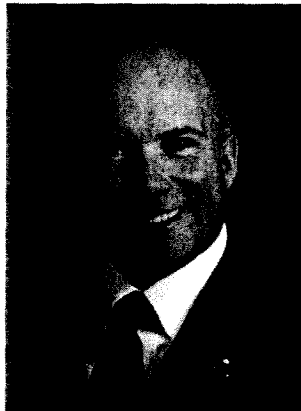
[Administrative & Support Staff](#)

[Past Administrators](#)

[Map & Directions](#)

[Illinois High School Activities Foundation](#)

[Related Organizations](#)



IHSA Assistant Executive Director

kgibson@ihsa.org

On January 18, 2002, Kurt J. Gibson, principal at Erie High School at the time, was named to be an assistant executive director of the Illinois High School Association (IHSA) by the Board of Directors, and he joined the IHSA staff on July 1, 2002.

Gibson graduated from Belvidere High School and lettered in golf, basketball and baseball. He then graduated cum laude from Bradley University in 1988 with a bachelor's degree in radio/TV and speech. He earned his master's in education from Governor's State University in 1999.

From 1989-92, Gibson taught English and speech and coached junior high and high school baseball and basketball in the Iroquois West School District. He then taught and coached at Coal City High School for a year. From 1993-95, he taught English and was the varsity baseball coach at Hinckley-Big Rock. The next three years (1995-98) he taught English/Journalism and was head basketball coach at Manteno High School.

Kurt moved into school administration at Manteno in 1998 when he became the school's dean of students and athletic director. In 1999 he became Manteno Middle School principal. Gibson became principal at Erie in 2000, where he served until assuming his duties with the IHSA.

Kurt and his wife, Jennifer, are parents of four sons, Nicholas, Benjamin, C.J., and Andrew.

Illinois High School Association

Phone: (309) 663-6377

Fax: (309) 663-7479

2715 McGraw Drive

Bloomington, IL 61704-6011

[Map & directions](#)

Office Hours

Monday-Friday, 8:00 am-4:15 pm
(closed Fridays in summer)

[Related organizations](#)

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