IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2008-IA-01207-SCT RT

COVINGTON COUNTY SCHOOL DISTRICT — APPELLANT

VS.

LUTRICIA MAGEE, INDIVIDUALLY AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF LONNIE C. MAGEE, JR., DECEASED, AND ALL OTHERS WHO ARE ENTITLED TO RECOVER UNDER THE WRONGFUL DEATH STATUTE — APPELLEE

APPEAL FROM THE CIRCUIT COURT
OF COVINGTON COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

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III. REPLY

The best the District can tell from Plaintiffs' Response Brief is that Plaintiffs continue to contend that ministerial dictates, or certain statutes and regulations enacted by the MHSAA, prescribe the duties for the District insofar as its oversight of football practice at its member schools. Consequently, the alleged acts or omissions by the District (1) in determining the time, during any given day, football practice is to be conducted, (2) in providing properly trained oversight personnel and/or professionals who are able to identify and/or make the determination when a student athlete reached his or her level of endurance, (3) in seeing that those in charge of practice actually perform sufficient observations and evaluations of the player's health, and (4) in providing the means for such oversight and evaluation by the District, were ministerial in nature. (R. 8-9).[1] Therefore, the exemption set forth in Miss. Code Ann. §11-46-9(1)(b) allegedly applies:

> (1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:
>
> . . .
>
> (b) Arising out of any act or omission of an employee of a governmental entity exercising ordinary care in reliance upon, or in the execution or performance of, or in the failure to execute or perform, a statute, ordinance, or regulation, whether or not the statute, ordinance, or regulation be valid . . . ;

Miss. Code Ann. § 11-46-9(1)(b) (Rev. 2002 and Supp. 2008). Plaintiffs further argue that the issue of ordinary care is not proper for summary judgment and should be determined by the trier of fact.

As discussed herein, Plaintiffs' opposition fails as a matter of law. In April, 2009, the Mississippi Court of Appeals conclusively established that the alleged acts or omissions of the

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[1] Plaintiffs' reference in their brief to the District's failure to have a portable external heart defibrillator is not a part of the record on appeal. This reference to an AED was part of Plaintiffs' expert designation filed in the trial court subsequent to the appeal. This Court's review is limited to the proof in the record, and the facts thereof. *McGee v. State,* 40 So.2d 160, 165 (Miss. 1949). Thus, any reference by the Plaintiffs to an AED should be ignored. Regardless, there is no statutory requirement that the District have an AED available at football practice.

District in the instant case were discretionary thereby entitling the District to immunity pursuant to Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002 and Supp. 2008). *Strange v. Itawamba County Sch. Dist.*, - - - So.3d - - - -, 2009 WL 1121667 (Miss. Ct. App. 2009).

A. <u>A Statutory Duty Has Not Been Conclusively Established</u>

Plaintiffs' Request for Admission No. 12 asking the District to "Admit that [it] has a statutory duty to provide a safe environment for its students" is clearly not seeking an admission of a statement or opinion *of fact*, or the *application of law to fact,* and, therefore, the District's admission does not conclusively establish anything for purposes of this litigation. *See* M.R.C.P. 36(a) (emphasis added). Plaintiffs failed to address this point in their opposition.

Moreover, Plaintiffs' Second Requests for Admission, and specifically, Request No. 17, was virtually identical to Request No. 12. In response, the District admitted that a statutory duty existed, but further elaborated, admitting that the alleged acts or omissions in this specific case were indeed discretionary. This is clearly not a situation wherein the District sought leave of Court to withdraw or amend an admission. The District simply clarified its prior response. Plaintiffs should not have propounded this request a second time if they did not want the District to have the opportunity to answer the request again.

Regardless, both Requests Nos. 12 and 17 seek, in a vacuum, an admission or denial concerning general duties governed by Mississippi law. To argue that an admission to same "conclusively establishes" the law of this case is a clear misinterpretation and/or misapplication of M.R.C.P. 36.

B. Miss. Code Ann. §37-9-14 Does Not Give Rise to a Statutory Duty That Applies to the Facts of This Case

Plaintiffs continue to cite to Miss. Code Ann. § 37-9-14 (Rev. 2007 & Supp. 2008) as allegedly providing a statutory duty to support their allegations that alleged acts or omissions of the District were ministerial. This statute does not give rise to a duty that applies to the alleged acts or omissions of the District. The statute is attached as an addendum to the District's initial brief. Miss. Code Ann. § 37-9-14 states that "[i]t shall be the duty of the superintendent to administer the schools in its district . . ." and then sets forth an inclusive, specific list of administrative duties that are bestowed on a superintendent. Miss. Code Ann. §37-9-14 (Rev. 2007 & Supp. 2008). Nowhere does Miss. Code Ann. § 37-9-14 (Rev. 2007 & Supp. 2008) discuss or infer any duties pertaining to the oversight of football practice and the personnel in charge of same.

When the language of a statute is clear and unambiguous . . . and where the statute conveys a clear and definite meaning . . . the Court will not resort to the rules of statutory interpretation. *Marx v. Broom,* 632 So.2d 1315, 1318 (Miss. 1994) (citing *State v. Heard,* 151 So.2d 417 (Miss. 1963)). The courts cannot restrict or enlarge the meaning of an unambiguous statute. *Id.* (citing *City of Hazlehurst v. Mayes,* 51 So. 890 (Miss. 1910)) (further citations omitted). Miss. Code Ann. §37-9-14 (Rev. 2007 & Supp. 2008) is not at all ambiguous and, therefore, cannot be enlarged by the Court here to give rise to a statutory duty that does not otherwise exist.

Moreover, Plaintiffs have yet to provide a single case to support their position that Miss. Code Ann. § 37-9-14 (Rev. 2007 & Supp. 2008) applies to this case. Plaintiffs' reliance on *Pigford v. Jackson Public School District,* 910 So. 2d 575 (Miss. 2005), as an interpretation of how Miss. Code Ann. § 37-9-14 applies to the case *sub judice*, is misplaced. There is not even a passing reference to Miss. Code Ann. § 37-9-14 in the *Pigford* decision.

Additionally, as stated in the District's initial brief, Mississippi's Courts have applied Miss. Code Ann. § 37-9-14 (Rev. 2007) in a limited context, namely in the assignment and reassignment of school personnel. *See, e.g., Gelenter v. Greenville Mun. Separate School District,* 644 So.2d 263, 268 (Miss. 1994) (statute addressed in the context of the renewal of a principal's contract); *Winters v. Calhoun County School Dist.*, 990 So.2d 238, 241 (Miss. Ct. App. 2008) (statute addressed in the context of the reassignment of a teacher to an alternative school); *Board of Educ. for Holmes County Schools v. Fisher,* 874 So.2d 1019, 1022-23 (Miss. Ct. App. 2004) (statute addressed in the context of the reassignment of a teacher). This Court has never extended this statute to facts similar to those in the instant case.

C. Miss. Code Ann. §37-9-69 Does Not Give Rise to a Statutory Duty That Applies to the Facts of This Case

Miss. Code Ann. § 37-9-69 (Rev. 2007) also does not give rise to a statutory duty that applies to this case. As previously discussed in Appellant's initial brief, this Court discussed this statute in detail in *L. W. v. McComb Separate School District*, 754 So. 2d 1136 (Miss. 1999). Therein, this Court noted that one statutory duty applicable to public schools is the following:

> It shall be the duty of each superintendent, principal and teacher in the public schools of this state to enforce in the schools the courses of study prescribed by law or by the State Board of Education, to comply with the law and distribution and use of free textbooks, and observe and enforce the statutes, rules and regulations prescribed for the operations of school. Such superintendents, principals and teachers **shall hold the pupils to strict account for disorderly conduct at the school**, on the way to and from school, on the playgrounds and during recess.

754 So. 2d at 1142 (Miss. 1999) (citing Miss. Code Ann. § 37-9-69) (emphasis added). This statute mandates that school personnel maintain appropriate control and discipline of students while the children are in their care. *Id.* Furthermore, the State of Mississippi mandates compulsory school attendance for all children under penalty of law. *Id.* (citing Miss. Code Ann. § 37-13-91 (Supp.

1998) (footnote omitted)). Since the state requires all children to be enrolled in school, it only seems logical that the state should then require school personnel to use ordinary care in administering schools, including exercising ordinary care to provide a safe school environment. *L. W. v. McComb Separate Sch. Dist.*, 754 So. 2d 1136, 1142 n. 4 (Miss. 1999). In other words, the statutory duty to provide a safe environment, to which the Plaintiffs continuously refer, derives, not from Miss. Code Ann. § 37-9-14 (Rev. 2007), as argued by the Plaintiffs, but from Miss. Code Ann. § 37-9-69 (Rev. 2007).

As stated in the District's initial brief, Mississippi's Courts have applied Miss. Code Ann. § 37-9-69 (Rev. 2007) and the derivative duty to provide a safe environment to students in a limited context, namely to school districts in cases where the disorderly conduct of other students caused the alleged injuries. *See, e.g., Henderson v. Simpson County Pub. Sch. Dist.*, 847 So. 2d 856, 857-58 (Miss. 2003) (applying duty to district where student taunted and assaulted another student); *Lang v. Bay St. Louis/Waveland Sch. Dist.*, 764 So. 2d 1234, 1240-41 (Miss. 1999) (applying duty to district where students fighting led to injury of innocent bystander/student); *L. W. v. McComb Separate Sch. Dist.*, 754 So. 2d 1136, 1142-43 (Miss. 1999) (applying duty to district where student assaulted another student); *Beacham v. City of Starkville Sch. Sys.*, 984 So.2d 1073, 1076 (Miss. Ct. App. 2008) (applying duty to district where student harassed a fellow student). Conveniently, Plaintiffs missed these authorities when boldly asserting that the District "fails to cite to any case wherein the Mississippi Supreme Court has limited the statutory authority to provide a safe environment for students" to disorderly conduct.

Perhaps more importantly, the Mississippi Court of Appeals, in the *Strange v. Itawamba County School District* decision, affirmed the District's position that the duty arising from Miss. Code Ann. § 37-9-69 (Rev. 2007) applies to the disorderly conduct of students. *Strange v. Itawamba*

County School District, - - - So.3d - - - -, 2009 WL 1121667, *5 (Miss. Ct. App. 2009). Moreover, Miss. Code Ann. § 37-9-69 (Rev. 2007) is unambiguous in its application to disorderly conduct of students. Plaintiffs argue that the statute should be enlarged beyond its unambiguous terms to create ministerial dictates that apply not only to the facts of this case, but to natural disasters such as hurricanes or tornadoes, or to the operation of buses when ice is on the roads, and any other calamity or catastrophe the Plaintiffs can imagine. Plaintiffs, however, offer no legal authority because none exists to support such a broad reading of this statute.

D. The MHSAA Handbook Does Not Give Rise to a Duty That Applies to the Facts of This Case

Moreover, the MHSAA handbook provides **no** guidelines for the District to follow (1) in determining the time, during any given day, football practice is to be conducted, (2) in providing properly trained oversight personnel and/or professionals who are able to identify and/or make the determination when a student athlete reached his or her level of endurance, (3) in seeing that those in charge of practice actually perform sufficient observations and evaluations of the player's health, and (4) in providing the means for such oversight and evaluation, the key allegations in Plaintiffs' Complaint. (R. 8-9). The District's position is bolstered by the uncontradicted affidavit of Dr. Ennis Proctor on these issues. (R. 42-43).

The Plaintiffs' cherry-picking of the handbook and pulling out provisions pertaining to the clothes to be worn the first five (5) days of practice, etc., do not give rise to duties in this case that could render the alleged acts or omissions of the District ministerial in nature. Not one of the provisions cited by the Plaintiffs has anything to do with the allegations pending before this Court.

E. There is No Distinguishing the *Prince* and *Harris* Decisions

As explained in the District's initial brief, this Court's decisions in *Prince v. Louisville Mun. School District, et al,* 741 So.2d 207 (Miss. 1999) and *Harris v. McCray*, 867 So. 2d 188 (Miss. 2004) are directly on point and render the District immune from liability for its alleged discretionary acts. Plaintiffs contend that *Prince* and *Harris* are distinguishable on two fronts: (1) that this Court, in *Prince* and *Harris,* did not consider any ministerial dictates, namely, the "duty to use ordinary care in administering schools, including exercising ordinary care to provide a safe school environment," and (2) that said cases focused on the acts or omissions of the coaches wherein the instant litigation focuses on the acts or omissions of the District.

For reasons already discussed, neither Miss. Code Ann. § 37-9-14 (Rev. 2007 & Supp. 2008) nor Miss. Code Ann. § 37-9-69 (Rev. 2007) applies to this case. In fact, in *Harris,* this Court expressly rejected the application of Miss. Code Ann. §37-9-69, the derivative duty for the District to maintain a safe environment for its students arising therefrom, and thus, the application to Miss. Code Ann. § 11-46-9(1)(b). 867 So. 2d at 190-191 (citing *L. W. v. McComb Separate Sch. Dist.,* 754 So. 2d 1136 (Miss. 1999)).

Moreover, Plaintiffs' contention that *Prince* and *Harris* do not focus on the acts or omissions of a school District, *per se,* is a short-cited interpretation of these cases. To the contrary, both cases involved claims against a school district. In each instance, the school district was dismissed on immunity grounds, and in the *Harris* case, dismissal was based on immunity for discretionary acts. As for Plaintiff's allegations against the District regarding the timing of practice and the oversight of practice, such responsibilities were expressly delegated by this Court to the discretion of the coaches in both *Prince* and *Harris. See Prince v. Louisville Mun. Sch. Dist., et al,* 741 So.2d 207,

212 (Miss. 1999) and *Harris v. McCray*, 867 So. 2d 188, 189 (Miss. 2004). Thus, Plaintiff's attempt to distinguish her claims from these two cases is, indeed, a distinction without a difference.

F. The *Stewart v. City of Jackson* Decision Is Distinguishable on Its Face

The Plaintiffs allege in their response that even if their allegations involve some degree of judgment or discretion by the District, they do not involve policy. Plaintiffs cite to this Court's statement in *Stewart v. City of Jackson* that the Court "must distinguish between real policy decisions implicating governmental functions and simple acts of negligence which injure innocent citizens." 804 So. 2d 1041, 1048 (Miss. 2002). Plaintiffs take the position, without more, that simple acts of negligence (not policy decisions) are at issue here.

Stewart involved a city bus driver who was responsible for taking elderly people to an adult day care center and said driver's alleged negligence in leaving an elderly lady unattended at the door of the bus. *Id.* at 1045. It is certainly easy to see how this Court reached this conclusion that the actions of the city and the driver in abandoning the elderly lady did not invoke any policy of the city but involved a simple act of negligence. *Id.* at 1048. It would be difficult to imagine how this driver's negligence in leaving an elderly lady unattended involved some sort of social, economic or political policy of the city. *Stewart* is easily distinguishable from the instant case.

G. The April 2009 Decision of *Strange v. Itawamba County School District* Conclusively Established That the Alleged Acts or Omissions of the District Were Discretionary

As stated in Appellant's initial brief, the issue raised in the District's Motion for Summary Judgment and the subject of this appeal is whether the alleged acts or omissions of the District were discretionary in nature thereby rendering the District immune from liability under the discretionary function exemption of the Mississippi Tort Claims Act, as more fully set forth at Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002 and Supp. 2008). This exemption provides that:

> (1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:
>
> . . .
>
> (d) Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused . . . ;

Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002 and Supp. 2008). Ordinary care is not required in analyzing the alleged acts or omissions of the District in the context of discretionary acts immunity. *See Collins v. Tallahatchie County*, 876 So. 2d 284, 289 (Miss. 2004). *See also Willing v. Estate of Benz,* 958 So.2d 1240, 1250 (Miss. Ct. App. 2007); *Barrentine v. Miss. Dep't. of Transp.*, 913 So.2d 391, 394 (Miss. Ct. App. 2005).

In April, 2009, the Mississippi Court of Appeals conclusively established that the alleged acts or omissions of the District in the instant case were discretionary thereby entitling the District to immunity pursuant to Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002 and Supp. 2008). *Strange v. Itawamba County School District,* - - - So.3d - - - -, 2009 WL 1121667 (Miss. Ct. App. 2009). *Strange* involved a high school football student who, while riding from school to the football practice field in the back of a pickup truck, was thrown from the truck as it rounded a curve. *Id.* at *1. The football player suffered multiple injuries, and his mother sued the school district, only, also alleging theories of negligence, negligent supervision, and breach of a fiduciary duty. *Id.* The trial court, in granting the District's motion for summary judgment, held that the District was immune from suit under the discretionary function exemption of the Mississippi Tort Claims Act, as set forth in Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002). *Id.*

On appeal, the Court of Appeals discussed the two-part "public policy function" test to determine if government conduct is discretionary. *See Strange,* - - - So.3d - - - -, 2009 WL 1121667, *2 (Miss.Ct.App. 2009) (citing *Jones v. Mississippi Department of Transportation,* 744 So.2d 256,

260 (¶ 11) (Miss. 1999) (citing *United States v. Gaubert,* 499 U.S. 315, 322 (1991)). First, the Court must determine whether the act involved "an element of choice or judgment." *Id.* (citing *Jones,* 744 So.2d at 260 (¶ 10) (citation omitted)). If so, then the Court must decide "whether the choice involved social, economic, or political policy." *Id.* On the other hand, governmental conduct is considered ministerial "if it is imposed by law and the performance of the duty is not dependent on the employee's judgment." *Id.* (citing *Jones,* 744 So.2d at 259-260 (¶ 9) (citing *Barrett v. Miller,* 599 So.2d 559, 567 (Miss. 1992)).

The Court of Appeals stated that since there was no statutory duty for the District to regulate or disallow this type of conduct, i.e. football players riding from school to practice in the back of a pick-up truck, then there is an element of choice by the District, thus satisfying the first prong of the two-part "public policy function" test to determine if governmental conduct is discretionary. *Strange,* - - - So.3d - - - -, 2009 WL 1121667, *3 (Miss.Ct.App. 2009) (citing *Dotts v. Pat Harrison Waterway Dist.*, 933 So. 2d 322, 326 (¶ 10) (Miss.Ct.App. 2006)) (The Court of Appeals upheld the trial court's determination that the water district had discretion in making decisions regarding the operation of its water park within the meaning of the MTCA and thus was immune because Mississippi had no statutory requirements on this topic.).

The Court of Appeals then turned its attention to the second prong of the "public policy function" test to determine whether the school district, through its employees, in either allowing students to ride in the back of a pick-up truck on school grounds, or ignoring the fact that students were riding on school grounds in this manner, impacted public policy. *Strange,* - - - So.3d - - - -, 2009 WL 1121667, *3 (Miss.Ct.App. 2009). The Court of Appeals agreed with the circuit court that the school district's actions did impact public policy. *Id.* The Court of Appeals stated the "[a]pplication of the public policy prong of the discretionary function test does not require proof of

the thought processes of the pertinent decision makers." *Id.* "Rather, the focus is on the nature of the actions taken, and whether they are susceptible to policy analysis." *Id.* (citing *Dotts,* 933 So.2d at 328 (¶ 16)) (internal citations omitted). "[O]nly those functions which by nature are policy decisions, whether made at the operational or planning level, are protected." *Id.* (citing *Stewart ex rel. Womack v. Jackson,* 804 So.2d 1041, 1047 (¶ 11) (Miss. 2002)).

In concluding that the alleged acts or omissions of the school district, as described above, impacted public policy, the Court of Appeals looked to the 2009 Regular Session of the Mississippi Legislature and to two bills that were introduced making it unlawful for individuals to ride in the back of a pick-up truck or in areas where seat belts were not available. *Id.* at *4. Both bills died in committee. *Id.* The Court of Appeals concluded that while it was not privy to the thought processes of the legislators as to why they did not make this conduct illegal on the public roadways of Mississippi, the Court recognized that this is the type of social, economic, and political policy the courts are prevented from "second-guessing." *Id.* Further, it is no less a policy when made by the District. *Id.* Accordingly, the decision satisfied the second prong of the public policy test as it involved a policy decision. *Id.*

Just as in *Strange,* there are no specific statutes for the District to adhere to (1) in determining the time, during any given day, football practice is to be conducted, (2) in providing properly trained oversight personnel and/or professionals who are able to identify and/or make the determination when a student athlete reached his or her level of endurance, (3) in seeing that those in charge of practice actually performed sufficient observations and evaluations of the player's health, and (4) in providing the means for such oversight and evaluation. These allegations represent the core of Plaintiffs' claims against the District. (R. 8-9). In other words, there are no duties that have been **positively imposed by law** and in a manner or upon conditions **which are specifically designated**

that would take the alleged acts or omissions out of the District out of the realm of discretionary. *See Mosby v. Moore,* 716 So.2d 551, 557-58 (Miss. 1998) (quoting *Barrett v. Miller,* 599 So.2d 559, 567 (Miss. 1992) (quoting *McFadden v. State,* 542 So.2d 871, 877 (Miss. 1989)) (emphasis added). Therefore, there is an element of choice by the District, thus satisfying the first prong of the two-part "public policy function" test to determine if governmental conduct is discretionary. *See Strange v. Itawamba County School District,* - - - So.3d - - - -, 2009 WL 1121667, *3 (Miss. Ct. App. 2009) (citing *Dotts v. Pat Harrison Waterway Dist.*, 933 So. 2d 322, 326 (¶ 10) (Miss. Ct. App. 2006)).

Moreover, the alleged acts or omissions by the District (1) in determining the time, during any given day, football practice is to be conducted, (2) in providing properly trained oversight personnel and/or professionals who are able to identify and/or make the determination when a student athlete reached his or her level of endurance, (3) in seeing that those in charge of practice actually perform sufficient observations and evaluations of the player's health, and (4) in providing the means for such oversight and evaluation, certainly impact public policy. *Strange,*- - - So.3d - - - -, 2009 WL 1121667, *3 (Miss.Ct.App. 2009). The District's thought processes on these issues are irrelevant. *Id.* The focus is on the nature of the alleged acts or omissions and whether they are simply **susceptible to a policy analysis.** *See Strange v. Itawamba County School District,* - - - So.3d - - - -, 2009 WL 1121667, *3 (Miss. Ct. App. 2009) (citing *Dotts v. Pat Harrison Waterway Dist.*, 933 So. 2d 322, 328 (¶ 16) (Miss. 2006)) (emphasis added).

In *Strange,* the Court of Appeals looked to the Mississippi legislature's recent decision to not pass two bills making it illegal for individuals to ride in the back of a pick-up truck or in areas where seat belts were not available in concluding that the school district's allowing students to ride in the back of a pick-up truck on school grounds, or ignoring the fact that students were riding on school grounds in this manner, impacted public policy. *Strange,* - - - So.3d - - - -, 2009 WL 1121667, *4

(Miss.Ct.App. 2009). The Court of Appeals did not look for the school district, itself, to espouse a policy argument. A mere "susceptibility to policy analysis," as found in the decision of the legislature, was enough. *Id.*

The alleged acts or omissions by the District, as described above, are certainly **susceptible to a policy analysis.** As for the timing of practice, conducting practice after school (August 8, 2007, was a school day) is, indeed, a widely accepted practice based on convenience and acclimating the players to the heat that accompanies the start of a football season in Mississippi. Holding these student-athletes over until late evening or night to conduct practice would cause an increased burden on the District's budget in the form of after-school supervision for the students. And yes, if you send the student-athletes home after school only to come back later that evening, one could hardly dispute that buses to return the students to school for practice would have to be made available for those that did not have their own transportation. This would lead to additional transportation costs for the District to absorb. Holding practice later in the evening or at night would also interfere with a student-athlete's academics, sleep, etc., issues trivialized by the Plaintiff. Whether we are on the first day of school or the tenth day of school should not matter. Moreover, the personnel to place in charge of practice is certainly a policy decision. *T.M. v. Noblitt*, 650 So.2d 1340, 1344 (Miss. 1995) (quoting the trial court's finding with approval which stated that "the duty to hire and supervise employees is necessarily and logically dependent upon judgment and discretion."). Typically, decisions concerning personnel involve social and public policy. *See Suddith v. Univ. of S. Miss.*, 977 So.2d 1158, 1179 (Miss. Ct. App. 2007). The decision as to what type of equipment to purchase and make available to the coaches, etc., is certainly a policy decision.[2]

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[2] *See* FN 1.

Also on the issue of policy, in *Dancy v. East Mississippi State Hospital,* this Court held that a mental health worker who was assigned to observe patients on a field trip to a Wal-Mart store was engaged in the exercise of a choice or judgment involving social, economic, or political policy alternatives, specifically in that case involving human welfare. 944 So.2d 10, 17, 18 (Miss. 2006). The choices of when to conduct practice, the personnel to oversee practice, and the actual oversight are clearly matters that involve human welfare rendering said choices discretionary. "Susceptibility to policy analysis" is what is required by the law. *See Strange v. Itawamba County School District,* - - - So.3d - - - -, 2009 WL 1121667, *3 (Miss.Ct.App. 2009) (citing *Dotts v. Pat Harrison Waterway Dist.*, 933 So. 2d 322, 328 (¶ 16) (Miss. 2006)) (emphasis added). The District can, and has, met its burden in showing that the alleged acts or omissions of the District implicate public policy.

Conclusion

Having established that the alleged acts or omissions of the District are discretionary in nature, the District is entitled to immunity from Plaintiffs' claims pursuant to Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002 and Supp. 2008). Therefore, the District respectfully requests that this Court reverse the trial court's denial of the District's motion for summary judgment and render a judgment of dismissal as to the District, with prejudice to the bringing of any further action.

RESPECTFULLY SUBMITTED, this, the 23rd day of June, 2009.

COVINGTON COUNTY SCHOOL DISTRICT
Appellant

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CERTIFICATE OF SERVICE

I, William B. Stewart, Sr., one of the attorneys for Appellant herein, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing document to the following:

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Signed, this, the 23rd day of June, 2009.

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