IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2008-IA-01207-SCT

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

BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

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ATTORNEYS FOR APPELLANT

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I. CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following persons, attorneys and parties have an interest in these proceedings:

1. Honorable Robert G. Evans, Judge, Circuit Court of Covington County, Mississippi;

2. Lutricia Magee, Individually and on behalf of the Wrongful Death Beneficiaries of Lonnie C. Magee, Jr. - Appellee;

3. Gerald P. Collier, Esq., Stamps & Stamps, Post Office Box 2916, Jackson, MS 39207-2916, Attorneys for Appellee;

4. Covington County School District - Appellant;

5. Robert P. Thompson and William B. Stewart, Sr., Copeland, Cook, Taylor & Bush, P.A., Post Office Box 6020, Ridgeland, MS 39158, Attorneys for Appellant;

6. Green Tree Family Medical Clinic, PLLC, Joe E. Johnston, M.D., and Word Johnston, M.D. - Defendants;

7. Robert D. Gholson, Esq. and Noel Rogers, Esq., Gholson, Burson, Entrekin & Orr, PLLC, P.O. Box 1289, Laurel, MS 39441, Attorneys for Defendants, Green Tree Family Medical Clinic, PLLC, Joe E. Johnston, M.D., and Word Johnston, M.D;

8. Bettye Logan, F.N.P. - Defendant;

9. Covington County Hospital - Defendant;

10. Robert Ramsay, Esq., P. O. Box 16567, Hattiesburg, MS 39404-6567, Attorney for Defendants, Betty Logan, F.N.P. and the Covington County Hospital;

11. Jolly Matthews, Esq., 48 Liberty Pl., Ste 2, Hattiesburg, MS 39402, Attorney for Defendant, Betty Logan, F.N.P; and,

12. Anita Modak-Truran, Esq. and Chad Hutchinson, Esq., Butler Snow, O'Mara, Stevens & Cannada, P. O. Box 22567, Jackson, MS 39225-2567, Attorneys for Defendant, Betty Logan, F.N.P.

We hereby certify that the above referenced individuals/entities have an interest in the outcome of this case. This representation is made in order that the Justices of this Court may evaluate possible disqualification or recusal.

RESPECTFULLY SUBMITTED, this, the 13th day of February, 2009.

COVINGTON COUNTY SCHOOL DISTRICT
Appellant

By: Wm. B. Stewart, Sr.
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IV. STATEMENT OF ISSUE(S)

Whether the claims of the Plaintiff, Lutricia Magee, Individually and on behalf of the Wrongful Death Beneficiaries of Lonnie C. Magee, Jr. ("the Plaintiff"), against the Covington County School District ("the District"), are based upon the District's exercise or performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion be abused, thereby entitling the District to immunity from Plaintiff's claims pursuant to Miss. Code Ann. §11-46-9(1)(d) (Rev. 2002 & Supp. 2008)?

V. STATEMENT OF THE CASE[1]

A. Nature of the Case

This case involves claims by the Plaintiff that the negligence of the District and certain other defendants proximately caused the death of Plaintiff's son, Lonnie C. Magee, Jr., on August 8, 2007. Plaintiff seeks damages pursuant to Miss. Code Ann. § 11-7-13 (Rev. 2004), Mississippi's Wrongful Death Statute.

B. The Course of the Proceedings

Plaintiff filed her First Amended Complaint on February 25, 2008. (R. 5-12).[2] Plaintiff admits in her First Amended Complaint and other pleadings that the District is a "governmental entity" and a "political subdivision" of the state under the Mississippi Tort Claims Act, as set forth in Miss. Code Ann. § 11-46-1(g), (i) (Rev. 2002 & Supp 2008). (R. 6, 46).

Plaintiff contends that on August 8, 2007, her son, Lonnie C. Magee, Jr., age seventeen, was a duly admitted student and member of the football team at Mount Olive High School which was located within the District. (R. 7). Plaintiff further contends that on this date, her son, Lonnie C. Magee, Jr., practiced football at Mount Olive High School on the school's practice field. (R. 7).

Plaintiff further contends that on August 8, 2007, the District had the following duties, namely, (1) to keep the football practice field in a reasonably safe condition and to ensure that all activities that are conducted on it are reasonably safe so as not to endanger the safety of the players participating in football practice; (2) to ensure that school officials and/or employees are capable of

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[1]References to the Record are designated as "R.__." References to the transcript of the hearing on the District's Motion for Summary Judgment are designated as "Tr.__." References to the Record Excerpts are designated as "R.E. __."

[2]The original Complaint is not part of the record. The allegations were duplicated in the First Amended Complaint. The First Amended Complaint simply added John Doe defendants.

conducting their duties and to insure that they do properly and sufficiently conduct their duties; (3) a statutory duty to provide a safe environment for its students; (4) a statutory duty to use ordinary care in administering public schools and to take ordinary and reasonable steps to minimize risks for its students; and, (5) the Superintendent, pursuant to Miss. Code Ann. §37-9-14, has a duty to administer schools within his or her district. (R. 7-9).

Plaintiff further contends that the District breached the aforementioned duties (1) by allowing football practice to be conducted in dangerously hot temperatures; (2) by failing to provide properly trained oversight personnel and/or professionals who were able to properly identify and/or make the determination when student athletes reached the limits of their endurance at football practice during the extremely hot days of August; (3) by allowing football practices in dangerously hot temperatures without performing sufficient observations and/or evaluations for heatstrokes, heat exhaustion, and/or any other heat-related conditions, lacking the capabilities to even perform these duties; and, (4) by failing to take any necessary precautions and safeguards to guard against the aforementioned conditions. (R. 8-9). Plaintiff contends that as a result of the aforementioned negligence, her son, Lonnie C. Magee, Jr., suffered a heatstroke at football practice on August 8, 2007, and died as a result. (R. 9). Plaintiff also claimed that the District was liable for her son's death under the doctrine of *res ipsa loquitor*. (R. 9).

The District filed its Answer on March 20, 2008, denying Plaintiff's claims of negligence and causation and asserting as an affirmative defense the protections afforded to it as a governmental entity under the Mississippi Tort Claims Act. (R. 31-40). Specifically, that as a "governmental entity" and a "political subdivision" of the state, the District may avail itself of the exemptions from liability set forth in Miss. Code Ann. § 11-46-9 (Rev. 2002 & Supp. 2008) and the limitations on liability set forth in Miss. Code Ann. § 11-46-15 (Rev. 2002). (R. 36).

The District thereafter filed its motion for summary judgment stating that Plaintiff's claims are based upon the District's exercise or performance or the failure to exercise or perform a discretionary function or duty, whether or not that discretion be abused, thereby entitling the District to immunity from Plaintiff's claims pursuant to Miss. Code Ann. §11-46-9(1)(d) (Rev. 2002 & Supp. 2008) and further, that the Plaintiff cannot establish liability via *res ipsa loquitur*. (R. 13-43). After an untimely response by the Plaintiff, the District filed its rebuttal. (R. 129-146). The District's motion was set for hearing on June 20, 2008. (R. 44-45).

C. Disposition in the Court Below

At a hearing on the District's motion for summary judgment on June 20, 2008, the trial court heard argument from counsel for both the District and the Plaintiff as to whether the District was entitled to immunity pursuant to Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002 & Supp. 2008). (Tr. 8-14). The trial court orally denied the District's motion for summary judgment on immunity grounds but granted the District's motion for summary judgment as to the Plaintiff's *res ipsa loquitur* claim. (Tr. 24). The trial court entered its written order on June 25, 2008. (R. 147).

The Plaintiff thereafter filed her Second Amended Complaint on July 3, 2008. (R. 149-164). While the substantive allegations against the District remained the same, the Plaintiff also named as defendants certain medical providers alleging that the Provisional Report of Autopsy and Death Certificate of Lonnie C. Magee, Jr., "revealed that heatstroke was the cause of death and that hypertensive heart disease and morbid obesity were contributory causes of death." (R. 153). Further, that these medical providers performed a "Sports Participation Physical Examination" on August 7, 2007, and cleared Lonnie C. Magee, Jr., to play football (R. 153-154). Plaintiff alleges that because of Lonnie C. Magee, Jr's hypertensive heart disease and weight, said providers should have given Lonnie C. Magee, Jr., an echocardiogram prior to clearing him to play football and had they done

so, the test would have revealed the left ventricular hypertrophy that was a contributing factor in Lonnie C. Magee, Jr.'s death. (R. 154).

The District thereafter filed a timely petition for permission to appeal the trial court's interlocutory order denying the District's motion for summary judgment on immunity grounds and to stay the proceedings as to the District. By Order dated August 27, 2008, this Court granted the District's petition and stayed the proceedings as to the District only. (R. 165-166).[3] The Plaintiff's allegations against the medical defendants are not part of this appeal.

D. Statement of the Facts Relevant to Issue on Appeal

The facts relevant to the issue presented for review are brief and straightforward. For purposes of this lawsuit, the District is a "governmental entity" and a "political subdivision" of the State under the Mississippi Tort Claims Act, as set forth in Miss. Code Ann. § 11-46-1(g), (i) (Rev. 2002 & Supp 2008). (R. 6, 14, 46). As a "governmental entity" and a "political subdivision" of the State, the District may avail itself of the exemptions from liability set forth in Miss. Code Ann. § 11-46-9 (Rev. 2002 & Supp. 2008) and the limitations on liability set forth in Miss. Code Ann. § 11-46-15 (Rev. 2002). (R. 36).

On August 8, 2007, Plaintiff's son, Lonnie C. Magee, Jr., age seventeen, was a member of the football team at Mount Olive High School located within the District and he practiced with the team on this date. (R. 7, 13-14). While participating in football practice, and while in the course of an agility drill, Lonnie C. Magee, Jr. collapsed. (R. 13-14). Lonnie C. Magee, Jr., required CPR, however, all lifesaving efforts ultimately failed and he was pronounced dead at the Covington

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[3]The trial court's granting of the District's motion for summary judgment as to the Plaintiff's claim of *res ipsa loquitur* is not part of this appeal and is not the subject of a cross-appeal by the Plaintiff.

County Hospital in Collins, Mississippi. (R. 14). This Court is being called upon to determine whether Plaintiff's claims as to the timing of football practice at Mount Olive High School, the training/qualifications of the personnel who oversaw the practice, and the alleged acts or omissions in the oversight of the practice, constitute discretionary acts thereby rendering the District immune from liability pursuant to Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002 & Supp. 2008). (R. 8-9).

[4] The issue of fault is not currently before the Court, thus the temperature on August 8, 2007, and/or whether Lonnie C. Magee, Jr., actually died from a heat stroke, are not relevant for purposes of this appeal.

VI. SUMMARY OF THE ARGUMENT

The trial court erred in denying the District's motion for summary judgment filed pursuant to Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002 & Supp. 2008), which states that where the District exercises or performs or fails to exercise or perform a discretionary function or duty, whether or not that discretion be abused, the District is entitled to immunity.

The alleged acts or omissions by the District were not ministerial in nature. The District's admission to Plaintiff's Request for Admission No. 12, which asked the District to "Admit that the Defendant, Covington County School District, has a statutory duty to provide a safe environment for its students," does not conclusively establish a statutory duty thereby rendering the alleged acts or omissions by the District ministerial in nature. Such is not an admission of a statement or opinion of fact or of the application of law to fact, as contemplated by Rule 36(a) of the Mississippi Rules of Civil Procedure. Moreover, in response to Plaintiff's Request for Admission No. 17, which is virtually identical to Request No. 12, the District specifically admits that the alleged acts or omissions in this particular case implicate discretionary conduct.

Additionally, the Plaintiff's allegations do not implicate any statutory duty in which the District is to abide. There is absolutely no statutory authority "positively imposing by law and in a manner or upon conditions which are specifically designated" the exact conduct expected of the District in overseeing the practice of football at its schools. *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).

Moreover, the statutory authority relied upon by the Plaintiff, specifically, Miss. Code Ann. § 37-9-69 (Rev. 2007), from which a duty to use ordinary care to provide a safe school environment has been inferred, does not give rise to a statutory duty in this case. As discussed fully in this brief, Mississippi's

Courts have applied Miss. Code Ann. § 37-9-69 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); *Lang v. Bay St. Louis/Waveland Sch. Dist.*, 764 So. 2d 1234, 1240-41 (Miss. 1999); *L. W. v. McComb Separate Sch. Dist.*, 754 So. 2d 1136, 1142-43 (Miss. 1999); *Beacham v. City of Starkville Sch. Sys.*, 984 So.2d 1073, 1076 (Miss. Ct. App. 2008). However, as for Plaintiff's allegations pertaining to the timing of practice at Mount Olive High School, the training/qualifications of the personnel who oversaw the practice, and the alleged acts or omissions in the oversight of practice, such responsibilities have been held to be discretionary conduct by either the coaches or a school district. *See Harris v. McRay*, 867 So. 2d 188, 193 (Miss. 2004); *Prince v. Louisville Mun. Sch. Dist.*, 741 So. 2d 207, 211-12 (Miss. 1999); *T. M. v. Noblitt*, 650 So. 2d 1340, 1344 (Miss. 1995).

Plaintiff's reliance upon Miss. Code Ann. § 37-9-14 (Rev. 2007 & Supp. 2008), which designates specific administrative responsibilities to the superintendent, is likewise misplaced. Miss. Code Ann. § 37-9-14 does not discuss or infer any duties pertaining to the oversight of football practice. As discussed fully in this brief, only three cases have interpreted this statute and have done so in the context of the assignment and reassignment of school personnel. *See, e.g., Gelenter v. Greenville Mun. Separate School District,* 644 So.2d 263, 268 (Miss. 1994); *Winters v. Calhoun County School Dist.*, 990 So.2d 238, 241 (Miss. App. 2008); *Board of Educ. for Holmes County Schools v. Fisher,* 874 So.2d 1019, 1022-23 (Miss. App. 2004).

Additionally, the Mississippi High School Athletic Association ("MHSAA") has not published or provided any literature to its member institutions that would give rise to a duty in this case. (*See* affidavit of Dr. Ennis Proctor, R. 42-43). As to the facts and allegations in this case, the affidavit of Dr. Proctor remains unrefuted.

As for Plaintiff's allegation that the District was negligent in "failing to provide properly trained oversight personnel and/or professionals who were able to properly identify and/or make the determination when student athletes reached the limits of their endurance at football practice during the extremely hot days of August," such clearly implicates discretionary act immunity. The duty to hire and supervise employees is necessarily and logically dependent upon judgment and discretion. *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.").

Lastly, the alleged acts or omissions of the District clearly implicate policy decisions. *See Harris v. McCray*, 867 So. 2d 188, 193 (Miss. 2004) and *Prince v. Louisville Mun. Sch. Dist.* 741 So. 2d 207, 211-12 (Miss. 1999). Outside of *Harris* and *Prince*, the alleged acts or omissions of the District are clearly "susceptible to a policy analysis." *See Pritchard v. Houten,* 960 So. 2d 568, 582 (Miss. Ct. App. 2007) (citing *Dotts v. Pat Harrison Waterway Dist.*, 933 So. 2d 322, 328 (Miss. 2006).

Because the alleged acts or omissions by the District were not ministerial, but discretionary in nature, the District is entitled to immunity pursuant to Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002 & Supp. 2008). Therefore, this Court should reverse the trial court's denial of the District's motion for summary judgment and render a judgment of dismissal, with prejudice, as to the District.

VII. ARGUMENT

The Trial Court Erred in Denying the District's Motion for Summary Judgment Pursuant to Miss. Code Ann. §11-46-9(1)(d) (Rev. 2002 & Supp. 2008)

A. The Standard of Review

The Court applies a de novo standard of review of a trial court's grant or denial of a motion for summary judgment. *Satchfield v. R. R. Morrison & Son, Inc.*, 872 So.2d 661, 663 (Miss. 2004) (further citations omitted).

B. The Mississippi Tort Claims Act

The Mississippi Tort Claims Act ("Act") provides the exclusive remedy against a governmental entity and its employees for acts or omissions which give rise to a suit. Miss. Code Ann. § 11-46-7(1) (Rev. 2002). According to the Act, a school district constitutes a "governmental entity" and a "political subdivision" of the state. Miss. Code Ann. § 11-46-1(g), (i) (Rev. 2002 & Supp. 2008).

It is the intent of the Act that the state and its political subdivisions shall be immune from suit at law or equity. Miss. Code Ann. § 11-46-3(1) (Rev. 2002). The Act, however, waives immunity for actions for money damages based upon the torts of governmental entities and employees to the extent set forth in the Act. Miss. Code Ann. § 11-46-5(1) (Rev. 2002). For claims or causes of action arising from acts or omissions occurring on or after July 1, 2001, liability for all claims arising out of a single occurrence shall not exceed Five-Hundred Thousand and no/100 Dollars ($500,000.00). Miss. Code Ann. § 11-46-15(1)(c) (Rev. 2002). Moreover, no judgment against a governmental entity or its employee for any act or omission for which immunity is waived under this chapter shall include an award for exemplary or punitive damages or for interest prior to judgment, or an award for attorney's fees unless attorney's fees are specifically authorized by law. Miss. Code Ann. § 11-46-15(2) (Rev. 2002).

The waiver of immunity under the Act is subject to the exemptions enumerated in Miss. Code Ann. § 11-46-9 (Rev. 2002 & Supp. 2008). Consequently, if the Court finds that the Plaintiff's claims fall within one of the exemptions set forth in Miss. Code Ann. § 11-46-9 (Rev. 2002 & Supp. 2008), then the District remains immune from any liability regardless of the statutory waiver.

The exemptions from liability under the Mississippi Tort Claims Act, codified at Miss. Code Ann. § 11-46-9 (Rev. 2002 & Supp. 2008), when applicable, constitute "an entitlement not to stand trial rather than a mere defense to liability and therefore, should be resolved at the earliest possible stage of litigation." *Chapman v. City of Quitman,* 954 So.2d 468, 473 (Miss.App. 2007) (quoting *Mitchell v. City of Greenville,* 846 So.2d 1028, 1029 (¶ 8) (Miss. 2003) (citation omitted)). Accordingly, the immunity afforded by the Mississippi Tort Claims Act is a question of law properly addressed by summary judgment under Mississippi Rule of Civil Procedure 56. *Id.*

C. Ministerial versus Discretionary Conduct

Whether the alleged conduct of the District was ministerial or discretionary is outcome determinative on the issue pending before the Court. While there is no flexible rule to distinguish whether an act is ministerial or discretionary, the most important criteria is that if the duty is one which has been positively imposed by law and in a manner or upon conditions ***which are specifically designated,*** the duty to perform under the conditions specified, not being dependent upon the officer's judgment or discretion, then the act or discharge thereof is ministerial. *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).

In opposing the District's motion for summary judgment, Plaintiff contends that certain statutes and regulations enacted by the Mississippi High School Athletic Association ("MHSAA") prescribe the duties for the District insofar as its oversight of football practice at its member schools and thus, the

alleged acts or omissions by the District were ministerial in nature. Therefore, the exemption set forth in Miss. Code Ann. §11-46-9(1)(b) applies and 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:
>
> . . .
>
> (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). (R. 47-52). Plaintiff contends that the issue of ordinary care is not proper for summary judgment and should be determined by the trier of fact. (R. 50-51).

On the other hand, a determination as to whether the governmental conduct is discretionary requires a two-prong analysis: " (1) whether the activity involved an element of choice or judgment; and if so, (2) whether the choice or judgment in supervision involves social, economic or political policy alternatives." *Doe v. State ex rel. Mississippi Dept. of Corrections,* 859 So.2d 350, 356 (Miss. 2003) (quoting *Bridges v. Pearl River Valley Water Supply Dist.,* 793 So.2d 584, 588 (Miss. 2001) (citing *Jones v. Miss. Dep't of Transp.,* 744 So.2d 256, 260 (Miss. 1999)). The focus is on the nature of the acts taken and their susceptibility to policy analysis; the court does not examine the actual subjective thought processes of the government decision-maker. *Pritchard v. Houten,* 960 So. 2d 568, 582 (Miss. Ct. App. 2007) (citing *Dotts v. Pat Harrison Waterway Dist.*, 933 So. 2d 322, 328 (Miss. 2006)).

As set forth herein, the alleged conduct of the District constitutes discretionary behavior thereby entitling the District to immunity pursuant to Miss. Code Ann. § 11-46-9(1)(d), which 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:
>
> . . .

conditions which are specifically designated" the exact conduct expected of the District in overseeing the practice of football at its schools. *See Mosby,* 761 So.2d at 557-58 (further citations omitted).

The Honorable Mitchell Lundy, Chancellor for the Third Judicial District of the State of Mississippi, tried, *sua sponte,* to create a legal duty in this regard by issuing a Temporary Restraining Order in his district in August, 2007, prohibiting school districts in the counties in which he presides from conducting outdoor activities between 9 a.m. and 7 p.m. due to the heat. (R. 70-72). This Court vacated the TRO and declared it void. *See In Re: Mississippi High School Activities Association, Mississippi Private School Association, Desoto County School District, South Panola School District, Senatobia Municipal School District, Montgomery County School District, Winona Public School District, and Water Valley School District,* No. 2007-M-01361 (Miss. 8/10/07). (R.E.4-5).

F. 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) does not give rise to a statutory duty that applies to this case. This statute was discussed in detail in *L. W. v. McComb Separate Sch. Dist.*, 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).

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 by 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 by 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 by fellow student). While the duty to provide a safe school environment could conceivably apply to other areas of school safety, it does not render the District an absolute guarantor of the students' safety. As for Plaintiff's allegations pertaining to the timing of practice at Mount Olive High School, the training/qualifications of the personnel who oversaw the practice, and the alleged acts or omissions in the oversight of practice, such have been held to be discretionary conduct by the coaches or the District.

G. This is not a Case of First Impression - The Alleged Acts or Omissions have been Deemed Discretionary

In addressing facts virtually identical to this case, the Mississippi Supreme Court affirmed the trial court's finding of immunity for both a school district and its coaches. *See Prince v. Louisville Mun. Sch.*

Dist., et al, 741 So.2d 207 (Miss. 1999). In Richard Prince's lawsuit against the Louisville Municipal School District and two of its football coaches at Nanih Waiya High School, Prince alleged that he suffered a heat stroke during football practice on August 29, 1991, due to the negligence of said coaches in failing (1) to monitor his health at practice; (2) to provide liquids in a timely manner; and, (3) in failing to provide necessary medical care in a timely manner. *Prince v. Louisville Mun. Sch. Dist.* 741 So.2d 207, 208-09 (Miss. 1999). The trial court granted the school district's and coaches' motion for summary judgment on immunity grounds. *Id.* at 210.

On appeal, this Court held that the school district was entitled to sovereign immunity. *Id.* at 210. In considering the acts or omissions of the coaches, this Court reviewed its prior decision in *Quinn v. Mississippi State University,* 720 So.2d 843 (Miss. ~~2008~~ 1998). *Id.* at 211. Therein, Bobby Quinn, a participant in a summer baseball camp at MSU, was injured when an instructor at the camp hit him in the mouth with a baseball bat. *Id.* (citing *Quinn,* 720 So.2d at 844-45). Quinn sued the university president, the head baseball coach at MSU, and an assistant in charge of the camp. *Id.* This Court affirmed the trial court's granting of summary judgment in favor of the three defendants, stating that at the time of Quinn's injury, the three defendants were "engaged in hiring employees, and coordinating, and supervising the baseball program either directly or indirectly. The motion for summary judgment was correctly granted as [the defendants] were engaged in a discretionary activity that served a public interest." *Id.* (citing *Quinn,* 720 So.2d at 849).

This Court also considered the Alabama Supreme Court's decision in *Lennon v. Petersen,* 624 So.2d 171 (Ala. 1993), wherein the Alabama Supreme Court addressed the effect of qualified immunity on a negligence action brought by an injured soccer player against a soccer coach and a university trainer. *Prince,* 741 So.2d at 211 (citing *Lennon,* 624 So.2d at 171). *Lennon* involved allegations by a university

soccer player against his soccer coach and trainer to that both were negligent in not recognizing the player's injuries and providing proper treatment. *Id.* (citing *Lennon,* 624 So.2d at 173).

In ruling that the acts or omissions of the coach were discretionary, the Alabama Supreme Court noted that the soccer coach had to rely on his own judgment and discretion in making difficult decisions while performing his job. *Id.* at 211. (citing *Lennon,* 624 So.2d at 174). He had to know what drills his player needed and how long the drills should last. *Id.* He also had to evaluate his players to determine if they were playing to the best of their ability. *Id.* He had to make difficult decisions in determining whether a player was injured and should report to the trainer or whether the player was merely faking an injury to avoid practice. *Id.* He also had to be aware that some players would hide their injuries so that they would be allowed to practice or play in a game. *Id.* He was responsible for motivating the players and evaluating their performance. *Id.* He was acting within his authority in using his discretion in such matters, and he is entitled to discretionary function immunity. *Id.* at 211-12. (citing *Lennon,* 624 So.2d at 174).

This Court concluded, in *Prince,* that the coaches were like the defendants in *Quinn* insofar as being responsible ***for the coordination and supervision of the football program*** at Nanih Waiya High School. *Id.* at 212 (emphasis added). Moreover, the coaches faced the same daily decisions as the soccer coach in *Lennon. Id.* Further, that a coach must consider the good order and discipline of the team when confronted with situational complaints of the players and must use his discretion in judging whether or not an individual player is injured and whether he should receive medical attention. *Id.* This Court held that there was no evidence to show that the coaches did anything beyond exercising ordinary discretion in supervising the football team and were entitled to qualified immunity, affirming the trial court's granting of summary judgment as to the District and the coaches. *Id.*

In a later case ***filed by the same law firm*** prosecuting the case *sub judice*, Victor Lorrell Harris, by and through his mother and next friend, Betty Jean Harris, filed suit in the Circuit Court of Jefferson County against Willie McRay (Coach McCray) and the Jefferson County School District for damages from a heatstroke Harris suffered while at football practice on August 21, 1995. *Harris v. McCray*, 867 So. 2d 188 (Miss. 2004). At a bench trial, after the close of the evidence, the trial court found both the coaches and district immune from liability under Miss. Code Ann. §11-46-1 to -23 (Rev. 2002), the Mississippi Tort Claims Act. *Id.*

On appeal by the Plaintiff, this Court noted that football practice was scheduled and conducted by Coach McRay in his capacity as football coach. *Harris,* 867 So. 2d at 189. As head football coach, Coach McRay had the ***discretion*** to determine ***the time that practice would be conducted*** and the nature of the practice, including the timing of breaks and cancellation of practice. *Id.* (emphasis added). This Court considered on appeal the question of whether the trial court erred in determining that the coach ***and the school district*** had immunity from liability under the Mississippi Tort Claims Act for the discretionary acts of an employee acting within the course and scope of his employment pursuant to Miss. Code Ann. §11-46-9(1)(d) (emphasis added). *Id.*

This Court considered its analysis in *L. W. v. McComb Separate Sch. Dist.*, 754 So. 2d 1136 (Miss. 1999). *Id.* In so doing, this Court expressly distinguished the facts in *L.W.* from the facts before it and ***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). *Id.* at 190-191.

The Court considered its findings in *Prince v. Louisville Mun. Sch. Dist., et al,* 741 So.2d 207, 212 (Miss. 1999) and the Alabama Supreme Court's analysis in *Lennon v. Petersen,* 624 So.2d 171 (Ala. 1993). *Harris,* 867 So. 2d at 191-92. The Court went into great detail explaining the public policy

behind giving deference to the coaches in conducting football practice. *Id.* at 193 (citations omitted). The Court stated that it must realize the consequences of its decision if it finds that the coach and school district were liable under these facts. *Id.* High school football coaches around the state would lose their ability to control their football teams. *Id.* The discipline of a football team would become non-existent. *Id.* Further:

> If the coach refused a player's request for a water break, to see a trainer, to not have to run anymore wind sprints, to not have to do anymore one-on-one blocking/tackling drills because of the player's complaint of "feeling weak," or "not feeling good," or simply "not feeling like it," that coach would be very much aware of the fact that he/she would be running the risk of being successfully sued along with other school officials and the school district should that player later suffer physical/medical problems related to the coach's failure to cow to the player's every whim and wish.

Id. On the other hand, if the coach, in fear of a successful lawsuit, should cow to the player's every whim, wish, and demand, then the coach would lose the respect of the players, and discipline and morale would soften. *Id.* The Court concluded that the actions and duties of a coach in coaching his football team were clearly discretionary and that ***both the coaches and the school district*** were entitled to immunity under Miss. Code Ann. § 11-46-9(1)(d). *Id.* at 193 (emphasis added).

Both the *Prince v. Louisville Mun. Sch. Dist.* 741 So. 2d 207 and *Harris v. McCray*, 867 So. 2d 188 (Miss. 2004) decisions are binding precedent in the pending case and both dictate that summary judgment be granted to the District pursuant to Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002 & Supp. 2008). Plaintiff argues that these cases are distinguishable because the cases focus on the acts or omissions of the coaches and not the school district and that the District should not have allowed practice on August 8, 2007. (Tr. 24). 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*. Thus, Plaintiff's attempt to distinguish her claims from these two cases is a distinction without a difference.

H. Miss. Code Ann. §37-9-14 does not Give Rise to a Statutory Duty that Applies to the Facts of this Case

Miss. Code Ann. § 37-9-14 (Rev. 2007) does not give rise to a statutory duty that applies to this case. A copy of the lengthy statute is attached as an addendum to the District's brief for ease of reference. As the Court can see, the statute states very broadly 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.

Moreover, 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. 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. App. 2004) (statute addressed in the context of the reassignment of a teacher). This statute has never been extended by this Court to facts similar to those in the instant case.

Additionally, Plaintiff's 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 improper. (R. 49-50). There is no mention of Miss. Code Ann. § 37-9-14 in the *Pigford* decision. Simply put, Miss. Code Ann. § 37-9-14 (Rev. 2007 & Supp. 2008) does not apply to the facts of this case.

I. The MHSAA Handbook does not Give Rise to a Duty that Applies to the Facts of this Case

No literature published or provided by the Mississippi High School Activities Association ("MHSAA") gives rise to a legal duty that applies to this case. Dr. Ennis Proctor, the Executive Director of the MHSAA, signed an affidavit in this matter stating that (1) the MHSAA has no policy or regulatory scheme in effect setting forth what outdoor activities are allowed, the timing of same, and the clothes to be worn, as based on the heat index; (2) that any literature or guidelines made available to its member institutions pertaining to the timing of practice, heat-related illnesses, and the hydration of athletes, are not regulatory in nature and are not enforced by the MHSAA; and, (3) that decisions regarding same are left to the discretion of the districts and their coaches. (R. 42-43).

Plaintiff has not presented any sworn testimony to contradict Dr. Proctor's affidavit. Instead, Plaintiff points to a provision in the MHSAA Handbook regarding the attire to be worn the first five (5) days of Fall practice alleging that this somehow creates a material issue of fact. (R. 50-51). This provision contradicts ***nothing*** in the affidavit of Dr. Proctor that pertains to the specific allegations in this case, especially the language about the time of day practice is to be conducted, heat-related illnesses, and the hydration of athletes. A complete reading of the Handbook (R. 73-114) discloses no specifications on these topics.

Moreover, the case of *Pearl River School District v. Groner,* 784 So.2d 911 (Miss. 2001), relied upon by Plaintiff in its opposition to the District's petition to suggest that the MHSAA Handbook constitutes a "regulation" under Miss. Code Ann. §37-9-69, is quite easily distinguishable from the facts of this case. (R. 50-51). In *Pearl River,* the Plaintiff was a patron at a basketball game which was open to the public and she was an invitee of the district. 784 So.2d at 913. The MHSAA Handbook did speak directly to this situation and prescribed that there must be two security guards on duty. *Id.* Only one

security guard was on duty that night. *Id.* The Plaintiff was injured when a fight broke out in the gym. *Id.* The MHSAA Handbook did "regulate" or specifically prescribe what was to be done in *Pearl River* leaving nothing to the judgment of the school officials. *Id.* at 915. The MHSAA Handbook provides no "regulations" addressing the specific allegations in the case at bar.

J. Plaintiff's Allegation Pertaining to the Qualifications of the Personnel at Practice on August 8, 2007, Fails as a Matter of Law

Plaintiff's claim that the District was negligent in "failing to provide properly trained oversight personnel and/or professionals who were able to properly identify and/or make the determination when student athletes reached the limits of their endurance at football practice during the extremely hot days of August" clearly implicates discretionary act immunity. This Court has specifically stated that the duty to hire and supervise employees is necessarily and logically dependent upon judgment and discretion. *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. University of Southern Mississippi*, 977 So.2d 1158, 1179 (Miss. App. 2007) (determining that to not give professor a tenure-track position was a discretionary function involving social or public policy). *See also* Miss. Code Ann. § 11-46-9(1) (g) (Rev. 2002 & Supp. 2008) ("A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim . . . arising out of the exercise of discretion in . . . the hiring of personnel . . .."). In short, Plaintiff's allegations attacking the qualifications of the personnel present on the practice field on August 8, 2007, are clearly the result of discretionary acts by the District and invoke immunity pursuant to Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2002 & Supp. 2008).

K. Plaintiff's Allegations Invoke Social, Economic, or Political Considerations

Plaintiff alleges in her opposition to the petition for interlocutory appeal that even if even if her allegations involve some degree of judgment or discretion by the District, they do not involve policy. Plaintiff cites 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). Plaintiff takes 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.

The District's position that its discretionary acts are subject to a policy analysis is supported by established precedent in Mississippi. This Court has gone into great detail in discussing the policy issues behind granting the school districts and its coaches discretionary acts immunity when presented with facts just like those presented in this case.[4]

August 8, 2007, was a school day. Schools in Mississippi have been conducting football practice in August during the last period of the school day or right after school dating back to the use of leather

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[4]*See* VII, Section G. of the District's Brief and this Court's public policy discussion in *Prince v. Louisville Mun. Sch. Dist.* 741 So. 2d 207, 211-212 (Miss. 1999) and *Harris v. McCray*, 867 So. 2d 188, 193 (Miss. 2004).

helmets. This is a widely accepted practice based largely on the convenience of those involved and to acclimate the players to the heat that accompanies the start of a football season in Mississippi.

If the school officials hold these student-athletes over until late evening or night to conduct practice, there are additional costs involved in providing after school supervision for the students until practice. 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. If you send the student-athletes home only to come back later that evening, the majority of the students at Mount Olive Attendance Center would have to return by bus. At that point, the Plaintiff has additional transportation and related costs to absorb, a real issue in today's economic climate. In short, these decisions by the District are certainly "susceptible to policy analysis." *See Pritchard v. Houten,* 960 So. 2d 568, 582 (Miss. Ct. App. 2007) (citing *Dotts v. Pat Harrison Waterway Dist.*, 933 So. 2d 322, 328 (Miss. 2006).

CONCLUSION

The Plaintiff's claims as to the timing of practice, etc., are based on discretionary acts. There is no question that the binding precedent set down by this Court in *Harris and Prince* mandates that summary judgment be granted as to the District. To rule that these acts are "ministerial" in nature and require the exercise of "ordinary care" would be to open the flood gates of litigation every time a high school athlete is injured in sports participation or practice and effectively eviscerate the statutory provision for discretionary acts immunity. It would not be long before athletics as we know them would probably be too expensive for the public schools to continue. This would be an irreparable loss to both the state and to society.

Defendant 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 13th day of February, 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 13th day of February, 2009.

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CHAPTER 9

District Superintendents, Principals, Teachers, and Other Employees

IN GENERAL

SEC.

§ 37-9-14. General duties and powers of superintendent of school district.

(1) It shall be the duty of the superintendent of schools to administer the schools within his district and to implement the decisions of the school board.

(2) In addition to all other powers, authority and duties imposed or granted by law, the superintendent of schools shall have the following powers, authority and duties:

(a) To enter into contracts in the manner provided by law with each assistant superintendent, principal and teacher of the public schools under his supervision, after such assistant superintendent, principal and teachers have been selected and approved in the manner provided by law.

(b) To enforce in the public schools of the school district the courses of study provided by law or the rules and regulations of the State Board of Education, and to comply with the law with reference to the use and distribution of free textbooks.

(c) To administer oaths in all cases to persons testifying before him relative to disputes relating to the schools submitted to him for determination, and to take testimony in such cases as provided by law.

(d) To examine the monthly and annual reports submitted to him by principals and teachers for the purpose of determining and verifying the accuracy thereof.

(e) To preserve all reports of superintendents, principals, teachers and other school officers, and to deliver to his successor or clerk of the board of supervisors all money, property, books, effects and papers.

(f) To prepare and keep in his office a map or maps showing the territory embraced in his school district, to furnish the county assessor with a copy of such map or maps, and to revise and correct same from time to time as changes in or alterations of school districts may necessitate.

(g) To keep an accurate record of the names of all of the members of the school board showing the districts for which each was elected or appointed, the post office address of each, and the date of the expiration of his term of

office. All official correspondence shall be addressed to the school board, and notice to such members shall be regarded as notice to the residents of the district, and it shall be the duty of the members to notify such residents.

(h) To deliver in proper time to the assistant superintendents, principals, teachers and board members such forms, records and other supplies which will be needed during the school year as provided by law or any applicable rules and regulations, and to give to such individuals such information with regard to their duties as may be required.

(i) To make to the school board reports for each scholastic month in such form as the school board may require.

(j) To distribute promptly all reports, letters, forms, circulars and instructions which he may receive for the use of school officials.

(k) To keep on file and preserve in his office all appropriate information concerning the affairs of the school district.

(*l*) To visit the schools of his school district in his discretion, and to require the assistant superintendents, principals and teachers thereof to perform their duties as prescribed by law.

(m) To observe such instructions and regulations as the school board and other public officials may prescribe, and to make special reports to these officers whenever required.

(n) To keep his office open for the transaction of business upon the days and during the hours to be designated by the school board.

(o) To make such reports as are required by the State Board of Education.

(p) To make an enumeration of educable children in his school district as prescribed by law.

(q) To keep in his office and carefully preserve the public school record provided, to enter therein the proceedings of the school board and his decision upon cases and his other official acts, to record therein the data required from the monthly and term reports of principals and teachers, and from the summaries of records thus kept.

(r) To delegate student disciplinary matters to appropriate school personnel.

(s) To make assignments to the various schools in the district of all noninstructional and nonlicensed employees and all licensed employees, as provided in Sections 37-9-15 and 37-9-17, and to make reassignments of such employees from time to time; however, a reassignment of a licensed employee may only be to an area in which the employee has a valid license issued by the State Department of Education. Upon request from any employee transferred, such assignment shall be subject to review by the school board.

(t) To employ substitutes for licensed employees, regardless of whether or not such substitute holds the proper license, subject to such reasonable rules and regulations as may be adopted by the State Board of Education.

(u) To comply in a timely manner with the compulsory education reporting requirements prescribed in Section 37-13-91(6).

(v) To perform such other duties as may be required of him by law.

(w) To notify, in writing, the parent, guardian or custodian, the youth court and local law enforcement of any expulsion of a student for criminal activity as defined in Section 37-11-29.

(x) To notify the youth court and local law enforcement agencies, by affidavit, of the occurrence of any crime committed by a student or students upon school property or during any school-related activity, regardless of location and the identity of the student or students committing the crime.

(y) To employ and dismiss noninstructional and nonlicensed employees as provided by law.

(z) To temporarily employ licensed and nonlicensed employees to fill vacancies which may occur from time to time without prior approval of the board of trustees, provided that the board of trustees is notified of such employment and the action is ratified by the board at the next regular meeting of the board. A school district may pay a licensed employee based on the same salary schedule as other contracted licensed employees in the district until school board action, at which time a licensed employee approved by the school board enters a contract. If the board, within thirty (30) days of the date of employment of such employee under this subsection, takes action to disapprove of the employment by the superintendent, then the employment shall be immediately terminated without further compensation, notice or other employment rights with the district. The terminated employee shall be paid such salary and fringe benefits that such employee would otherwise be entitled to from the date of employment to the date of termination for days actually worked.

(3) All funds to the credit of a school district shall be paid out on pay certificates issued by the superintendent upon order of the school board of the school district properly entered upon the minutes thereof, and all such orders shall be supported by properly itemized invoices from the vendors covering the materials and supplies purchased. All such orders and the itemized invoices supporting same shall be filed as a public record in the office of the superintendent for a period of five (5) years. The superintendent shall be liable upon his official bond for the amount of any pay certificate issued in violation of the provisions of this section. The school board shall have the power and authority to direct and cause warrants to be issued against such district funds for the purpose of refunding any amount of taxes erroneously or illegally paid into such fund when such refund has been approved in the manner provided by law.

(4) The superintendent of schools shall be special accounting officer and treasurer with respect to any and all district school funds for his school district. He or his designee shall issue all warrants without the necessity of registration thereof by the chancery clerk. Transactions with the depositories and with the various tax collecting agencies which involve school funds for such school district shall be with the superintendent of schools, or his designee.

(5) The superintendent of schools will have no responsibility with regard to agricultural high school and junior college funds.

All agricultural high school and junior college funds shall be handled and expended in the manner provided for in Sections 37-29-31 through 37-29-39.

(6) It shall be the duty of the superintendent of schools to keep and preserve the minutes of the proceedings of the school board.

(7) The superintendent of schools shall maintain as a record in his office a book or a computer printout in which he shall enter all demands, claims and accounts paid from any funds of the school district. The record shall be in a form to be prescribed by the State Auditor. All demands, claims and accounts filed shall be preserved by the superintendent of schools as a public record for a period of five (5) years. All claims found by the school board to be illegal shall be rejected or disallowed. To the extent allowed by board policy, all claims which are found to be legal and proper may be paid and then ratified by the school board at the next regularly scheduled board meeting, as paid by the superintendent of schools. All claims as to which a continuance is requested by the claimant and those found to be defective but which may be perfected by amendment shall be continued. The superintendent of schools shall issue a pay certificate against any legal and proper fund of the school district in favor of the claimant in payment of claims. The provisions of this section, however, shall not be applicable to the payment of salaries and applicable benefits, travel advances, amounts due private contractors or other obligations where the amount thereof has been previously approved by a contract or by an order of the school board entered upon its minutes, or paid by board policy, or by inclusion in the current fiscal year budget, and all such amounts may be paid by the superintendent of schools by pay certificates issued by him against the legal and proper fund without allowance of a specific claim therefor as provided in this section, provided that the payment thereof is otherwise in conformity with law.

SOURCES: Laws, 1986, ch. 492, § 61; Laws, 1987, ch. 307, § 8; Laws, 1991, ch. 539, § 1; Laws, 1994, ch. 636, § 1; Laws, 1994, ch. 607, § 13; Laws, 1995, ch. 426, § 1; Laws, 1999, ch. 358, § 1; Laws, 2005, ch. 394, § 2; Laws, 2008, ch. 383, § 1, eff from and after passage (approved Mar. 31, 2008.)

Joint Legislative Committee Note — Paragraph (w) of subsection (2) of this section contained an incorrect reference to "Section 37-11-92." In 2007, the reference was changed to "Section 37-11-29" at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The correction was ratified by the Joint Committee, pursuant to Section 1-1-109, at the Committee's August 5, 2008, meeting.

Amendment Notes — The 2008 amendment added (2)(z).

JUDICIAL DECISIONS

1. In general.

Mississippi Education Employment Procedures Law did not apply to a case where a former employee was transferred to an alternative school after teaching biology at a junior high and high school because contract that the employee signed stipulated that the school district had the authority to transfer her, a reassignment was permitted under Miss. Code Ann. § 37-9-14(2)(s), and the reassignment was according to educator licensure guidelines in Mississippi. Winters v. Calhoun County Sch. Dist., — So. 2d —, 2008 Miss. App. LEXIS 193 (Miss. Ct. App. Apr. 1, 2008).

Superintendent received the photocopy of the claimed weapon and made the determination that the nail file device was a