

**IN THE SUPREME COURT OF MISSISSIPPI**

**CIVIL APPEAL NO. 2010-CA-02103**

**T**

**ZACHARY CLEIN, a minor, individually  
and by and through Debra Clein,  
Natural Mother and Next Friend**

**APPELLANT**

**VS.**

**RANKIN COUNTY SCHOOL DISTRICT**

**APPELLEE**

**COURT APPEALED FROM: Circuit Court**

**COUNTY: Rankin**

**TRIAL JUDGE: William E. Chapman, III**

**APPELLANT'S CERTIFICATE OF INTERESTED PERSONS**

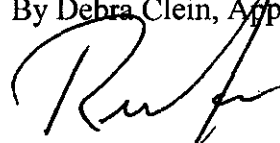
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Reeves Jones, Esq. Attorney for Appellant  
Reeves Jones, P.A.  
PO Box 742  
Jackson, MS 39205
2. Debra Clein, mother of Zachary Clein--Appellant  
Zachary Clein, a minor
3. Rankin County School District--Appellee  
Brandon, Mississippi
4. Benjamin E. Griffith, Esq., Attorney for Appellee  
Griffith & Griffith  
PO Drawer 1680  
Cleveland, MS 38732-1680

5. Fred M. Harrell, Jr., Esq.—Attorney for RCSD  
Harrell & Rester  
306 E. Government Street  
Brandon, MS 39042

Respectfully submitted,

Zachary Klein, a minor,  
By Debra Klein, Appellant

A handwritten signature in black ink, appearing to read 'Reeves Jones', is written over the printed name.

Reeves Jones, MB # [REDACTED]  
Attorney for Appellant  
PO Box 742  
Jackson, MS 39205-0742  
601-354-3794

## **APPELLANT'S STATEMENT OF THE CASE**

### **I. Procedural History**

On November 12, 2009, appellant Debra Clein acting as mother and “next friend” of Zachary Clein (Zach), a minor, filed her complaint in Rankin County Circuit Court against appellee Rankin County School District (RCSD) for injuries Zach sustained at Brandon Middle school on November 20, 2008 (R-7). The suit was brought under Mississippi’s Tort Claims Act—Miss. Code Ann. 11-46-1 (Supp. 2007) *et seq.*, since RCSD was a governmental entity as defined by Miss. Code Ann. 11-46-1(g) of the act. (R-7)

On December 9, 2009, RCSD filed its answer and affirmative defenses, including all defenses available under Miss. Code Ann. 11-46-1 (Supp. 2007) *et seq.* (R-18)

The parties participated in pre-trial discovery, which included written discovery and oral depositions (R-5), and on July 2, 2010, RCSD filed its Motion for Summary Judgment. (R-24) On July 22, 2010, Clein filed her Response to Motion for Summary Judgment. (R-32). On September 23, 2010, RCSD filed its Rebuttal in Support of Motion for Summary Judgment. (R-100). The parties also served upon the trial judge their respective supporting briefs. (See Plaintiff’s Statement of the Evidence and Proceedings When No Transcript is Available—R-113-140)

RCSD’s motion for summary judgment was heard before the Hon. William Chapman, Circuit Court Judge, on December 6, 2010<sup>1</sup>. At the hearing, the court asked

---

<sup>1</sup> Plaintiff’s statement of evidence erroneously gives the hearing date as October 6, 2010; the hearing actually took place *December* 6, 2010. (R-113)

the attorneys to approach the bench; the court then informed the attorneys that it had read their memorandum briefs and exhibits and needed no further oral argument. (R-113) The court then ruled from the bench that RCSD was immune from liability under the discretionary functions exclusion of the Mississippi Tort Claims Act. The court also stated it saw no liability for premises liability based on the immunity from premises liability under the same act. (R-113-114) Because the court's discussion with the attorneys and rulings were conducted at the bench, the court reporter did not take down the verbal exchanges and court rulings. (R-114)<sup>2</sup>

On December 10, 2010, the court entered its written Order Granting Motion for Summary Judgment. (RE-6, R-111)

On December 21, 2010, Clein filed her Notice of Appeal to the Supreme Court of Mississippi. (R-143)

## **II. Statement of Facts Relevant to Issues for Review**

On the morning of November 20, 2008, Zach Clein was an eighth grade student at Brandon Middle School in Rankin County attending physical education class, i.e., gym class. It was very cold that morning and Coach Marney Walker—who was acting as the teacher for the eighth grade gym class—told the students to “run the bleachers.” The bleachers in question were the concrete stadium bleachers behind the Brandon Middle School. On the morning of November 20, 2008, the concrete bleacher steps were slippery. (R-68, 69)

---

<sup>2</sup> Clein has summarized the motion hearing and court's comments and ruling in her Statement of Evidence and Proceedings When No Transcript is Available (R-113-114)

According to Zach,<sup>3</sup> Coach Walker's instructions for "running the bleachers" were simply to run up and down the bleacher steps until he told them to stop. (R-13, 41, 44, 69, 70, 71 ) Also according to Zach, Coach Walker had required the students to "run the bleachers" in the past, and each time his instructions were the same: to run up and down the bleacher steps until he told them to stop. (R-70, 71, 72, 73 ) Coach Walker also used "running the bleachers" as a method for punishing students. (R-44, 45)

Because it was so cold, most of the students were wearing street clothes and school shoes, not gym suits or running shoes. (R-41, 67) That particular morning Zach was wearing blue jeans, flat-soled tennis shoes, and "heavy clothes," including *two* wintertime coats, one coat heavier than the other. (R-41, 60) Because it was so cold, many of the other students also wore their coats while running. (R- 67); Zach kept his hands in his coat pockets because they were getting numb. (R-41, 60) It was difficult for Zach to keep his balance with his hands in his pockets, running up and down the steep concrete steps in blue jeans, tennis shoes and two coats. (R-74 )

Significantly, in a letter to parents Coach Walker had previously stated that for physical education classes, 8<sup>th</sup> grade students would need "tennis shoes, shorts, tee shirts and warm-ups." ( R-91) Obviously that morning Coach Walker did not require his students to wear appropriate gym clothes while running the bleachers.

While running down the slippery concrete steps Zach's foot slipped and he fell headfirst down three or four steps and crashed face-first into the metal rail at the bottom of the steps, knocking out his front teeth and spraining his knee. (R-41, 42, 45, 46, 49, 61, 67, 68, 73, )

---

<sup>3</sup> All of Zach's statements used in appellant's brief derive from his sworn deposition. (R 37-78)

Coach Walker is a certified licensed instructor in physical education.<sup>4</sup> (R-118) The 2006 Mississippi Physical Education Framework Overview, which contains physical education policy at RCSD in force in November 2008, required Coach Walker to apply “appropriate warm-up and cool-down techniques.” (R-89, 94) In his deposition, Coach Walker explained that “running the bleachers” was a warm- up exercise. (R-117-118 ) Significantly, Coach Walker testified that his instructions to students to run up, stop then walk down the bleachers was intended “to prevent possible injuries.” (R-119)

Although Coach Walker testified that he and Coach Patterson instructed the children to run up the bleachers, stop and walk down the bleachers (R-119), this assertion by Coach Walker is expressly and repeatedly contradicted by Zach Clein’s sworn testimony. (R- 41, 69, 70, 71, 72, 73, 75). According to Zach, Coach Walker’s instructions for running the bleachers were very simple and straightforward: to run up and down the bleachers until he told them to stop. (R-70, 71, 72, 73 )

It is the position of Ms. Clien that if the facts asserted by Zach are taken as true, then Coach Walker certainly knew the correct way to implement “running the bleachers”; nevertheless, Coach Walker knowingly, intentionally and willfully violated school policy by instructing the children to run up and down steep, slippery concrete stadium bleachers in cold weather while they were wearing blue jeans and heavy coats. Clearly this method of “warm-up” activity was not appropriate under RCSD physical education policy, in direct contravention to the appropriate method of “running the bleachers”

---

<sup>4</sup> Although RCSD states in its Motion for Summary Judgment that deposition excerpts and exhibits were attached to its motion (R-24), none were attached to the motion contained in the Court file. References to Coach Walker’s deposition testimony are directed to footnotes in RCSD’s Memorandum of Authorities (R-116-120), where RCSD paraphrases Coach Walker’s deposition testimony.

*methods for the stated warm-up exercise*, or in proper sports attire. Coach Walker admitted that the purpose of the proper method for running bleachers was “to prevent possible injury,” but according to Zach, Coach Walker ignored his own precepts, thus rendering the slippery stadium steps unreasonably dangerous for students forced to run up and down them in winter coats and everyday school clothes.

## **APPELLANT'S LEGAL ARGUMENT**

**1. Whether the trial court erred in ruling that Rankin County School District was entitled to Summary Judgment as a matter of law in accordance with Rule 56, Mississippi Rules of Civil Procedure.**

A motion for summary judgment may be granted only where there is no genuine issue of material fact; summary judgment is not a substitute for the trial of disputed facts. *Brown v. Credit Ctr., Inc.*, 444 So.2d 358, 362 (Miss.1984). Issues of fact sufficient to require denial of a motion for summary judgment obviously are present where one party swears to one version of the matter in issue and another says the opposite. *APAC-MISSISSIPPI INC., v. Goodman*, 803, So.2d 1177 (Miss. 2002), at 1181, citing *Aetna Cas. & Sur. Co. v. Berry*, 669 So.2d 56 (Miss. 1996), at 70. .

In most cases where summary judgment is at issue, “[t]he evidence must be viewed in the light most favorable to the party against whom the motion has been made.” *Id.* In those instances, “[a]ll that is required of a non-movant to survive a motion for summary judgment is to establish a genuine issue of material fact....” *Id.*, citing *Simmons v. Thompson Mach. of Miss., Inc.*, 631 So.2d 798, 801 (Miss.1994).

For the limited purpose of summary judgment, the trial court should have considered each of the following facts as true:

1. On the morning of November 20, 2008, Coach Walker required the children in his 8<sup>th</sup> grade physical education class to “run the bleachers” in the stadium behind the Brandon Middle School. (R- 40-41)



2. Coach Walker's instructions for running the bleachers were very simple and straightforward: to run up and down the bleachers until he told them to stop. (R-70, 71, 72, 73 )

3. Only Coach Walker gave instructions for running the bleachers. (R-44, 46, 51, 86, 87)

4. In addition to being a "warm-up" exercise, Coach Walker also used "running the bleachers" as punishment for "kids that were acting out (sic)." (R-44, 45)

5. On the morning of November 20, 2008, it was very cold and the concrete bleacher steps were slippery. (R-41, 68, 69)

6. In a letter to parents Coach Walker had previously stated that for physical education classes, 8<sup>th</sup> grade students would need "tennis shoes, shorts, tee shirts and warm-ups." ( R-91)

7. On the morning of November 20<sup>th</sup>, Coach Walker did not require students to wear any of the abovementioned sports apparel, including "warm-ups." Because it was so cold, most of the students were wearing street clothes and school shoes, not warm-up suits or running shoes. (R-41, 67)

8. That particular morning Zach wore blue jeans, flat-soled tennis shoes, and "heavy clothes," including two winter-time coats on top of each other, one coat heavier than the other. (R-41, 60)

9. Because it was so cold, Zach and many of the other students wore their coats while running. (R- 67);

10. Zach kept his hands in his coat pockets because they were getting numb, and when he slipped and fell, his hands were in his coats pockets. (R-41, 60)

11. Coach Walker required Zach to run up and down the slippery concrete bleacher steps wearing heavy clothing, including two coats which constricted his movements and contributed to his falling. (R-41)

12. Coach Walker, a licensed physical education teacher, was not acting as a coach that morning, but rather as a teacher of physical education for 8<sup>th</sup> graders. (R-40, 41, 118)

13. The 2006 Mississippi Physical Education Framework Overview adopted by the Rankin County School District required Coach Walker to apply "*appropriate* warm-up and cool-down techniques." (Emphasis added) (2006 MFEF p. 42) (R-89; See also Appellant's addendum "b." to brief hereto)

14. In his deposition, Coach Walker described the appropriate procedure for "running the bleachers," as running up, stopping and then walking down the bleachers. (R-119)

15. Coach Walker also testified that the purpose of having students "run up, stop then walk down the bleachers" was intended "to prevent possible injuries." (R-119)

16. According to Zach, Coach Walker had *never* instructed the students on this appropriate method of running the bleachers, but instead required the students to run up and down the concrete stadium bleacher steps. (R-41, 44, 46, 51)

Given these facts viewed in a light most favorable to Zachary Clein, the trial court's granting of summary judgment was inappropriate under Mississippi law as set forth below.

2. Whether the trial court erred in ruling that Rankin County School District was entitled to immunity from liability under the discretionary exception outlined in Miss. Code Ann. 11-46-9-(1)(d): “A governmental entity and its employees acting within the course and scope of their employment or duties shall not be held liable for any claim . . . 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.”

*a. Were Coach Walker’s actions discretionary or ministerial?*

Miss. Code Ann. Section 37-9-69 provides in pertinent part:

**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 in distribution of textbooks, and to observe and enforce the statutes, rules and regulations prescribed for the operation of schools.**

A governmental entity enjoys immunity *in the exercise of ordinary care* in the performance of a duty, ordinance or regulation. *Collins v. Tallahatchie County*, 876 So.2d 284 (Miss. 2004) at 289, citing *Harris v. McCray*, 867 So.2d 188 (Miss. 2003). MISS. CODE ANN. 11-46-9(1)(b).

Coach Walker was fully aware of the 2006 MPEF Overview Guidelines for eighth grade warm-up activities and the requirement for teaching *appropriate* warm-up techniques. He was also fully aware of the appropriate method for “running bleachers” as an appropriate warm up technique. If we accept Coach Walker’s description of the appropriate technique for bleacher running as a warm-up exercise, and contrast that

description with the sworn testimony of Zachary Klein, then the only conclusion one can draw is that Coach Walker knowingly, intentionally, willfully and negligently failed to follow his duty to teach and implement *appropriate* warm-up techniques in Zach's physical education class.

To suggest that Coach Walker had discretion in deciding whether to implement appropriate or inappropriate warm-up exercises in clear violation of the 2006 MPEF Overview Guidelines for eighth graders is neither rational nor in the public interest. Such an interpretation of "discretion" would run contrary to the most rudimentary concept of public policy. If we accept the testimony of Zachary Klein, as we must in a summary judgment context, Coach Walker knowingly disregarded specific school guidelines and his own knowledge of appropriate warm-up techniques for running bleachers, and instead ordered the students to engage in an inappropriate warm-up exercise that caused or contributed to the injuries suffered by Zachary Klein.

Because Coach Walker was acting in his teaching capacity when supervising Zach and his classmates, not as a coach of a school athletic sport activity, he is not afforded the protection outlined in *Covington County School District v. Magee*, 29 So.3d 1 (Miss. 2010). In *Covington*, a high school football player collapsed and died from heat stroke during football practice on a hot August afternoon. The Mississippi Supreme Court specifically recognized the ministerial duty to use ordinary care to provide a safe school environment (citing Miss. Code Ann. 37-9-69 (Rev. 2007), but reasoned that this ministerial duty did *not* apply to the specific facts in the case, i.e., because there were no specific statutes, rules or regulations pertaining to "the timing and oversight of football practice" *Covington County School District v. Magee*, 29 So.3d 1 (Miss. 2010).

In the words of the Supreme Court:

“We must balance the serious negative repercussions which could result for all extra-curricular school activities if the discretionary decisions of coaches are not exempt from liability pursuant to Miss. Code Ann. 11-46-9(1)(d) with the need for providing a well-rounded education. There is nothing in the record to imply that Coach McCray’s actions as football coach on August 21, 1995, violated any statute, ordinance, or regulation. *Id.*, citing *Harris v. McCray*, 867 So.2d 188 (Miss. 2003)

The *Covington* and *Harris* cases are distinguishable from the case at bar for several important reasons. First, Coach Walker was not coaching student athletes at the time of Zach’s injuries, but rather teaching a physical education class for non-athlete eighth graders. The Supreme Court’s extremely broad application of coaching discretion in extra-curricular athletic activities is inapplicable in our case.

Secondly, at the time of Zach’s injuries, there were specific physical education guidelines in place pertaining to warm-up techniques for eighth graders at Brandon Middle School, i.e., the 2006 Mississippi Physical Education Framework Overview adopted by the Rankin County School District. The regulations required *appropriate* warm-up exercises for 8<sup>th</sup> grade students. Such was not the case in *Covington* and *Harris*.

Thirdly, Coach Walker knew that the appropriate way to “run the bleachers” was intended “to prevent possible injuries,” yet he willfully, intentionally and knowingly violated school policy and required Zach and other students to run the bleachers in a manner that was clearly inappropriate, dangerous and proximately caused or contributed

to Zach's fall and injuries. Clearly Coach Walker did not exercise anything close to ordinary care.

And fourthly, because Coach Walker knew or should have known that the concrete bleacher steps were slippery, that the students were not wearing gym clothes but rather street clothes and heavy coats, and that the students were not running the bleachers in an appropriate manner, the injuries to Zach caused by his fall were reasonably foreseeable.

***b. Even if Coach Walker's actions were discretionary, did they also involve public policy?***

In the *Covington* case, there are three strong dissenting opinions which discuss the majority's failure to find that the coach's discretionary conduct was not actually grounded in social, economic, or political policy, thus eliminating the discretionary defense. As Justice Kitchens noted,

"This Court agreed with the plaintiff, noting that it "must distinguish between real policy decisions implicating governmental functions and simple acts of negligence which injure innocent citizens." *Id.*, citing *Stewart v. City of Jackson*, 804 So.2d 1041 (Miss. 2002)

In *Covington*, the majority specifically found that the District's discretionary decision to allow coaches the ability to set and conduct practices as they saw fit—including actions that might be likened to "a military-style drill sergeant"—was "rooted in public policy—coaches know their players and must be able to control their teams." *Id.*, citing *Harris*, 867 So.2d at 192-93. This ruling is clearly specific to a limited set of facts involving coaches, athletes and extra-curricular activities.

As previously stated, at the time of Zach's injuries, Coach Walker was not acting as a coach of a football team. He was acting as a physical education teacher of eighth grade non-athletes. In order to determine issues of discretion and public policy, one must look at cases that address teachers and students, not coaches and athletes.

In the case of *Pritchard v Von Houten*, 960 So.2d 568 (Miss. 2007), a student at the University of Kentucky suffered third degree burns to her ankle at an "iron pour" demonstration in a class conducted by Von Houten, who was a visiting tenured professor from the University of Southern Mississippi. After a bench trial, the circuit court found that Von Houten and USM were not negligent and that USM was immune from suit for the injury because the student's claim was based on Von Houten's exercise of a discretionary function pursuant to 11-46-9(1)(d). *Id.*, at 572.

The Mississippi Court of Appeals reversed the circuit court, rendered a verdict in favor of the student and remanded the case for further hearing on damages only. *Id.*, at 583. In reaching its decision, the Court of Appeals determined that the professor's decision to forego putting sand on the wet ground (thus causing the accident) during his iron pour demonstration, albeit discretionary in nature, did not involve social, economic, or political policy, and thus the university was not protected by discretionary function immunity:

"USM argues that Von Houten's conduct at the iron pour furthered a public policy favoring a well-rounded education. However, in *Duke v. Department of Agriculture*, 131 F.3d 1407, 1411 (10<sup>th</sup> Cir. 1997), the Tenth Circuit rejected the idea that a choice involving any hint of policy concerns would be within discretionary function immunity because that approach would "eviscerate" the social, economic, or political prong of the test and would allow the

discretionary function immunity exception to “swallow” the FTCA’s sweeping waiver of sovereign immunity. . . .

“In this case, it is difficult for this Court to fathom how Von Houten’s failure to put down dry sand involved a policy judgment of a social, political, or economic nature.” *Id.*, at 583.

Likewise, if we accept Zachary Klein’s version of events, it is difficult to fathom how RCSD can successfully argue that Coach Walker’s willful and intentional decision to conduct an inappropriate warm-up exercise in direct contravention to 2006 MPEF guidelines somehow involved application of some social, economic or political policy. Does the defendant school district have a policy in force providing that teachers may knowingly, willingly, intentionally and negligently require students to participate in inappropriate exercise activities?

### ***3. Premises Liability Immunity***

Mississippi’s Tort Claims Act affords governmental immunity for premises liability arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity is not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care. MISS. CODE ANN. 11-46-9(1)(v).



As previously mentioned, the trial court did not provide the parties with a factual basis or legal analysis when granting RCSD summary judgment on the issue of premises liability. (R-113-114)

At the time of his injuries, Zach was not engaged in a voluntary exercise. He was required to run on slippery concrete steps wearing street clothes and two (2) coats, on a cold, inclement day—those facts are not in dispute.

Whether the slippery concrete stadium steps constituted an unreasonably dangerous premises condition must be viewed in light of the totality of facts and, if necessary, with the aid of expert testimony. The record does reflect that Coach Walker knew that the correct method for students “running the bleachers” was intended “to prevent possible injuries.” (R-119)

If we accept facts most favorable to the non-moving party to the summary judgment motion, we must conclude that Coach Walker knew or should have known that the steep, slippery concrete bleacher steps would constitute a dangerous premises condition for non-athlete students *required* to “run the bleachers” in an inappropriate manner, without proper sports attire, wearing street clothes and coats on a cold November morning. Certainly this issue should be one for the trier of facts.

### **CONCLUSION**

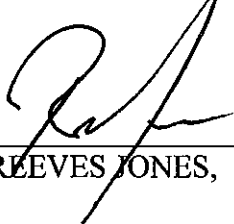
In *Pritchard v Von Houten*, 960 So.2d 568 (Miss. 2007), the Mississippi Supreme Court rejected the argument that a teacher’s “choice” of activities to which he would subject students would constitute a discretionary action absent some clear social,

economic, or political policy. Likewise, in *Covington County School District v. Magee*, 29 So.3d 1 (Miss. 2010), the Court recognized liability under 11-46-9(1)(d) **but for** a limited policy exception extended to coaches who are engaged in extra-curricular activities with high-school athlete students. That is not the case here.

The trial court should not have granted Rankin County School District summary judgment dismissing Zachary Clein's case under Mississippi's Tort Claims Act.

Respectfully Submitted

Zachary Clein, Appellant



---

REEVES JONES, HIS ATTORNEY

**CERTIFICATE OF SERVICE**

I, Reeves Jones, hereby certify that I have sent via U. S. Mail, Postage Prepaid, a true copy of the above and foregoing Brief of Appellant to:

**Hon. Judge William E. Chapman, III  
Circuit Judge, District 20  
PO Box 1626  
Canton, MS 39046-1626**

**Benjamin E. Griffith, Esq.  
Griffith & Griffith  
PO Drawer 1680  
Cleveland, MS 38732-1680**

**Fred M. Harrell, Jr., Esq.—Attorney for RCSD  
Harrell & Rester  
306 E. Government Street  
Brandon, MS 39042**

DATED, this the 12 day of April, 2011.

  
REEVES JONES

Reeves Jones, MB # [REDACTED]  
Attorney for Plaintiffs/Appellants  
PO Box 742  
Jackson, MS 39205-0742  
601-354-3794  
Fax: 601-354-3792  
Email: [ReevesJonesLaw@aol.com](mailto:ReevesJonesLaw@aol.com)

**APPELLANT'S ADDENDUM TO BRIEF**

- 1. Mississippi Tort Claims Act, Miss. Code Ann. 11-46-9, et seq., (as amended)**
- 2. Excerpt from the 2006 Mississippi Physical Education Framework Overview**

**§ 11-46-9. Governmental entities and employees; exemption from liability**

(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:

(a) Arising out of a legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature;

(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;

(c) Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury;

(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;

(e) Arising out of an injury caused by adopting or failing to adopt a statute, ordinance or regulation;

(f) Which is limited or barred by the provisions of any other law;

(g) Arising out of the exercise of discretion in determining whether or not to seek or provide the resources necessary for the purchase of equipment, the construction or maintenance of facilities, the hiring of personnel and, in general, the provision of adequate governmental services;

(h) Arising out of the issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke any privilege, ticket, pass, permit, license, certificate, approval, order or similar authorization where the governmental entity or its employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked unless such issuance, denial, suspension or revocation, or failure or refusal thereof, is of a malicious or arbitrary and capricious nature;

(i) Arising out of the assessment or collection of any tax or fee;

(j) Arising out of the detention of any goods or merchandise by any law enforcement officer, unless such detention is of a malicious or arbitrary and capricious nature;

(k) Arising out of the imposition or establishment of a quarantine, whether such quarantine relates to persons or property;

(l) Of any claimant who is an employee of a governmental entity and whose injury is covered by the Workers' Compensation Law of this state by benefits furnished by the governmental entity by which he is employed;

(m) Of any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution when the claim is filed;

(n) Arising out of any work performed by a person convicted of a crime when the work is performed pursuant to any sentence or order of any court or pursuant to laws of the State of Mississippi authorizing or requiring such work;

(o) Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability, including, but not limited to, any claim based on activities of the Mississippi National Guard when such claim is cognizable under the National Guard Tort Claims Act of the United States, 32 USCS 715 (32 USCS 715), or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;

(p) Arising out of a plan or design for construction or improvements to public property, including, but not limited to, public buildings, highways, roads, streets, bridges, levees, dikes, dams, impoundments, drainage channels, diversion channels, harbors, ports, wharfs or docks, where such plan or design has been approved in advance of the construction or improvement by the legislative body or governing authority of a governmental entity or by some other body or administrative agency, exercising discretion by authority to give such approval, and where such plan or design is in conformity with engineering or design standards in effect at the time of preparation of the plan or design;

(q) Arising out of an injury caused solely by the effect of weather conditions on the use of streets and highways;

(r) Arising out of the lack of adequate personnel or facilities at a state hospital or state corrections facility if reasonable use of available appropriations has been made to provide such personnel or facilities;

(s) Arising out of loss, damage or destruction of property of a patient or inmate of a state institution;

(t) Arising out of any loss of benefits or compensation due under a program of public assistance or public welfare;

(u) Arising out of or resulting from riots, unlawful assemblies, unlawful public demonstrations, mob violence or civil disturbances;

(v) Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care;

(w) Arising out of the absence, condition, malfunction or removal by third parties of any sign, signal, warning device, illumination device, guardrail or median barrier, unless the absence, condition, malfunction or removal is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice;

(x) Arising out of the administration of corporal punishment or the taking of any action to maintain control and discipline of students, as defined in Section 37-11-57, by a teacher, assistant teacher, principal or assistant principal of a public school district in the state unless the teacher, assistant teacher, principal or assistant principal acted in bad faith or with malicious purpose or in a manner exhibiting a wanton and willful disregard of human rights or safety; or

(y) Arising out of the construction, maintenance or operation of any highway, bridge or roadway project entered into by the Mississippi Transportation Commission or other governmental entity and a company under the provisions of Section 1 or 2 of Senate Bill No. 2375, 2007 Regular Session, where the act or omission occurs during the term of any such contract.

(2) A governmental entity shall also not be liable for any claim where the governmental entity:

(a) Is inactive and dormant;

(b) Receives no revenue;

(c) Has no employees; and

(d) Owns no property.

(3) If a governmental entity exempt from liability by subsection (2) becomes active, receives income, hires employees or acquires any property, such governmental entity shall no longer be exempt from liability as provided in subsection (2) and shall be subject to the provisions of this chapter.

## **EIGHTH GRADE**


### **Content Strands**

Gross Motor Skills Development (GM)  
Social Skills (S)  
Cognitive Development (C)  
Fitness (F)

Fine Motor Skills Development (FM)  
Personal Skills (P)  
Lifelong Learning/Participation (L)  
Adapted Physical Education (AP)

\*See glossary

### **COMPETENCIES and Suggested Objectives:**

1. **Demonstrate competency in motor skills and movement patterns needed to perform a variety of physical activities. (GM, FM, C)**
  - a. Demonstrate increased proficiency in movement skills while participating in team and individual sports.
  - b. Perform continuous and discrete skills (i.e., discrete skills have a defined beginning and end and continuous skills are ongoing).
  - c. Execute offensive and defensive strategies in individual and team sports.
2. **Demonstrate understanding of movement concepts, principles, strategies, and tactics as they apply to the learning and performance of physical activities. (C, F, L, GM)**
  - a. Create offensive and defensive strategies in physical activities.
  - b. Apply appropriate warm-up and cool down\* techniques while participating in a variety of physical activities.
  - c. Utilize principles of training and conditioning (FITT\*, Warm-up-Work out- Cool down\*, specificity, intensity, overload) to improve physical fitness.
  - d. Understand how biomechanics (i.e., human movement from a variety of perspectives) affects performance.
3. **Exhibit a physically active lifestyle. (C, GM, P, L)**
  - a. Participate in games, sports, dance, and/or other activities in a variety of settings that are based on personal interests.
  - b. Set personal physical fitness goals based upon the results of fitness assessments.
  - c. Participate and apply basic muscular strength and endurance principles and safety practices both inside and outside of school.



- 4. Achieve and maintain a health-enhancing level of physical fitness. (L, C)**
  - a. Apply each health-related fitness component (i.e., muscular strength, endurance, flexibility, body composition, aerobic fitness) and explain how participation in physical activity impacts personal fitness.
  - b. Examine and discuss pre- and post-fitness test scores after participation in fitness-enhancing activities.
  - c. Implement a personal fitness plan to accomplish a physical fitness goal.
- 5. Exhibit responsible personal and social behavior that respects self and others in physical activity settings. (S, P, L)**
  - a. Exhibit characteristics of a positive role model.
  - b. Solve conflicts in physical activity by determining potential solutions.
  - c. Work cooperatively in a group to achieve common goals.
- 6. Value physical activity for health, enjoyment, challenge, self-expression, and/or social interaction. (P, L, F, C)**
  - a. Express enjoyment while participating in physical activities.
  - b. Engage in physical activities that provide challenge, problem solving, decision-making and risk taking.