REL: December 6, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180372

Ex parte Sonia Blunt

PETITION FOR WRIT OF MANDAMUS

(In re: Matthew Langston, a minor child, and Joshua Langston, a minor child, by and through their father and next friend, Keith Langston

v.

Patsy Lowry et al.)

(Tuscaloosa Circuit Court, CV-12-901151)

PER CURIAM.

Sonia Blunt, a teacher in the Tuscaloosa City Schools system ("TCS"),[1] petitions this Court for a writ of mandamus directing the Tuscaloosa Circuit Court to enter a summary judgment in her favor on the basis of State-agent immunity as to claims asserted against her by Keith Langston, as next friend and father of Joshua Langston and Matthew Langston, minors at the time the action was filed.[2] We grant the petition.

I. Facts

On June 28, 2010, Marcus Crawford was a student in Blunt's "credit-recovery" class offered by TCS at Northridge High School ("Northridge") during the summer of 2010. According to TCS's 2009-2010 "Student/Parent Resource Guide and Code of Student Conduct" ("resource guide"), the credit-recovery program "is a course-specific, skill-based extended learning opportunity for students who have been unsuccessful in mastering content or skills required to have received

[1]In the materials before this Court, the entity that operates the school system in the City of Tuscaloosa is referred to as both "Tuscaloosa City Schools" and "Tuscaloosa City Board of Education."

[2]At the time of the accident, Matthew had just completed the eighth grade and Joshua had just completed first grade. Matthew is now 23 years old and Joshua is now 16 years old.

course credit or earn promotion. Credit recovery courses are based on deficiencies rather than a repeat of the entire course or courses failed." Students had to meet certain qualifications to be eligible for the credit-recovery program, but the program was voluntary, not a requirement, for eligible students.

On June 28, 2010, at approximately 11:14 a.m., Crawford informed Blunt that he had completed his course work for that day. According to Blunt, she did not speak to Crawford and when he left the classroom she did not know where he was going. Crawford's version of events is markedly different. In an affidavit, Crawford stated: "When I finished my work, I told Ms. Blunt that I was leaving class. She told me to go to McDonald's [fast-food restaurant] to get her lunch and to be back in no more than five to ten minutes. I wasn't going to get anything. She asked me to go." During his criminal trial stemming from the accident that underlies this case, Crawford expanded on this testimony:

> "Q. How much time did y'all have for lunch?
>
> "A. Well, class was over. She just asked me to get her something. And they --
>
> "Q. Okay. Who asked you to go get something?

> "A. The teacher.
>
> "Q. The teacher. Okay. So the teacher, as y'all were going to McDonald's, I guess said, 'Well, as long as you're going, would you pick me up something too?' Is that about right?
>
> "A. No. She asked me. I didn't want nothing. They -- the teacher asked me to get her something. She gave me her money to get her something.
>
> "....
>
> "Q. And you said she told you to be back when?
>
> "A. No later than five or ten minutes."

Blunt adamantly denies that she asked Crawford to pick up lunch for her at McDonald's. She notes that Crawford's testimony was contrary to testimony at Crawford's criminal trial from fellow students Jestin White and Jessica White, who stated that Jestin White was the one who asked Crawford to go to McDonald's to get lunch. Blunt adds that, in his statement to police two days after the accident, Crawford made no mention of being asked by Blunt to go to McDonald's.

It is undisputed that Crawford went to his vehicle in the Northridge parking lot along with several companions and that he drove to McDonald's and ordered food. According to Crawford and Jessica White, Crawford then drove his vehicle

back in the direction of Northridge. Crawford testified that it took longer to get the food from McDonald's than he thought it would and that he was in a hurry to get back to the school campus because Blunt had told him to be gone no more than 5 or 10 minutes. Approximately one mile from the Northridge campus, on a two-lane public road, Crawford attempted to pass a vehicle in front of him by crossing a double-yellow center line and driving in the oncoming lane of traffic. In doing so, Crawford collided with a vehicle driven by Susan Kines Langston, a TCS teacher, in which Matthew Langston and Joshua Langston were passengers. Susan Langston was killed in the accident, and Matthew and Joshua were seriously injured and eventually had to be life-flighted to Children's Hospital in Birmingham.

Crawford was charged, tried, and convicted of reckless manslaughter for his actions in causing Susan Langston's death. He was sentenced to five years and nine months in prison.

On December 5, 2012, Keith Langston, as father and next friend of Matthew and Joshua, filed the present action in the Tuscaloosa Circuit Court against Blunt and Patsy Lowry,

another TCS teacher who was an instructor at Northridge during the summer of 2010. Langston asserted claims of negligence and wantonness against Blunt and Lowry for failing to follow the "policies and procedures" of TCS, which failure allegedly proximately caused the injuries sustained by Matthew and Joshua Langston.[3]

On November 16, 2016, Blunt and Lowry filed a summary-judgment motion and supporting evidentiary materials in which they asserted that they were entitled to State-agent immunity for all claims asserted against them in their individual capacities. On November 30, 2016, Langston filed a response in opposition to the summary-judgment motion. In that response, Langston contended, among other things, that Blunt and Lowry were not entitled to State-agent immunity because, he argued, they had violated detailed rules and regulations of TCS. On December 1, 2016, Blunt and Lowry filed a reply to Langston's response.

[3]The estate of Susan Langston is not a party to this action. A separate action against Crawford was filed asserting a wrongful-death claim; that action resulted in a court-approved settlement.

On the same date, Lowry and Blunt filed a "Motion to Strike Portions of [Langston's] Evidentiary Submissions." In that motion, Lowry and Blunt asked the trial court to strike portions of testimony from various witnesses as well as several of Langston's document submissions. One of those documents was titled "Northridge High School Faculty Handbook" ("the faculty handbook"). In their December 1, 2016, motion to strike, Lowry and Blunt contended that the faculty handbook "does not qualify as admissible evidence under the business records exception to the hearsay rule, has not otherwise been properly authenticated, and [Langston has] not otherwise laid a proper predicate for the admissibility of this document."

The next submission in this case occurred on January 28, 2018, when Langston filed a supplement to evidentiary submissions and an amended response to the summary-judgment motion. Langston's amended response was identical to his original response, except that it added a contention that Alabama's Administrative Code dictated that a school year consisted of both the regular academic year and the summer-school session that followed the academic year. On

January 30, 2018, Lowry and Blunt responded to Langston's argument based on the Alabama Administrative Code.[4]

On January 31, 2018, the trial court held a hearing on Lowry and Blunt's summary-judgment motion. On January 7, 2019, the trial court entered an order granting Lowry and Blunt's motion to strike certain portions of testimony from various witnesses but denying Lowry and Blunt's motion to strike the faculty handbook, concluding that "[q]uestions relating to the Faculty Handbook go to weight to be given the document rather than its admissibility." The trial court also entered a summary judgment in favor of Lowry as to all claims asserted against her. With respect to Blunt, the trial court concluded:

> "Based upon the record before the Court, based upon the written submissions of the parties, based upon the arguments of counsel and based upon the Court's own research into the issues in this case, the Court hereby finds:

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[4]Blunt and Lowry contended that the portion of the Alabama Administrative Code cited by Langston, Regulation 29-3-1-.02(9)(d) (Alabama State Board of Education), which provides that "[a] school year consists of the regular academic year plus the following summer school," "specifically pertains to the time allotment in which a student may fulfill his or her credit requirements" and that it does not impact the definition of a school year in § 16-13-231, Ala. Code 1975, as "180 full instructional day[s]."

> "....
>
> "2. That genuine issues of material fact do exist regarding the claims as they relate to Defendant Sonia Blunt and said Defendant is not entitled to a judgment as a matter of law. Blunt's Motion for Summary Judgment is hereby DENIED."

(Capitalization in original.)

Blunt timely petitioned this Court for a writ of mandamus challenging the trial court's denial of her motion for a summary judgment.

II. Standard of Review

> "'While the general rule is that the denial of a motion for summary judgment is not reviewable, the exception is that the denial of a motion grounded on a claim of immunity is reviewable by petition for writ of mandamus. Ex parte Purvis, 689 So. 2d 794 (Ala. 1996)....
>
> "'Summary judgment is appropriate only when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Rule 56(c)(3), Ala. R. Civ. P., Young v. La Quinta Inns, Inc., 682 So. 2d 402 (Ala. 1996). A court considering a motion for summary judgment will view the record in the light most favorable to the nonmoving party, Hurst v. Alabama Power Co., 675 So. 2d 397 (Ala. 1996), Fuqua v. Ingersoll-Rand Co., 591 So. 2d 486 (Ala. 1991); will accord the nonmoving party all reasonable favorable inferences from the evidence, Fuqua, supra, Aldridge v. Valley Steel Constr., Inc., 603 So. 2d 981 (Ala. 1992);

> and will resolve all reasonable doubts against the moving party, Hurst, supra, Ex parte Brislin, 719 So. 2d 185 (Ala. 1998).
>
> "'An appellate court reviewing a ruling on a motion for summary judgment will, de novo, apply these same standards applicable in the trial court. Fuqua, supra, Brislin, supra. Likewise, the appellate court will consider only that factual material available of record to the trial court for its consideration in deciding the motion. Dynasty Corp. v. Alpha Resins Corp., 577 So. 2d 1278 (Ala. 1991), Boland v. Fort Rucker Nat'l Bank, 599 So. 2d 595 (Ala. 1992), Rowe v. Isbell, 599 So. 2d 35 (Ala. 1992).'"

Ex parte Turner, 840 So. 2d 132, 135 (Ala. 2002) (quoting Ex parte Rizk, 791 So. 2d 911, 912-13 (Ala. 2000)). A writ of mandamus is an extraordinary remedy available only when the petitioner can demonstrate: "'(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court.'" Ex parte Nall, 879 So. 2d 541, 543 (Ala. 2003) (quoting Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001)).

III. Analysis

Blunt contends that she is entitled to State-agent immunity and that, therefore, the trial court erred in denying her motion for a summary judgment.

> "A State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's
>
> "....
>
> "(5) exercising judgment in the discharge of duties imposed by statute, rule, or regulation in releasing prisoners, counseling or releasing persons of unsound mind, or educating students.
>
> "Notwithstanding anything to the contrary in the foregoing statement of the rule, a State agent shall not be immune from civil liability in his or her personal capacity
>
> "....
>
> "(2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law."

Ex parte Cranman, 792 So. 2d 392, 405 (Ala. 2000) (emphasis in subparagraph (5) added).

> "This Court has established a 'burden-shifting' process when a party raises the defense of State-agent immunity. Giambrone v. Douglas, 874 So. 2d 1046, 1052 (Ala. 2003). In order to claim State-agent immunity, a State agent bears the burden of demonstrating that the plaintiff's claims arise

> from a function that would entitle the State agent to immunity. Giambrone, 874 So. 2d at 1052; Ex parte Wood, 852 So. 2d 705, 709 (Ala. 2002). If the State agent makes such a showing, the burden then shifts to the plaintiff to show that the State agent acted willfully, maliciously, fraudulently, in bad faith, or beyond his or her authority. Giambrone, 874 So. 2d at 1052; Wood, 852 So. 2d at 709; Ex parte Davis, 721 So. 2d 685, 689 (Ala. 1998). 'A State agent acts beyond authority and is therefore not immune when he or she "fail[s] to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist."' Giambrone, 874 So. 2d at 1052 (quoting Ex parte Butts, 775 So. 2d 173, 178 (Ala. 2000))."

Ex parte Estate of Reynolds, 946 So. 2d 450, 452 (Ala. 2006) (emphasis added).

It is undisputed that Blunt sustained her initial burden of demonstrating that Langston's claims concerning her actions in supervising Crawford arise from a function that entitles her to State-agent immunity, i.e., educating students in the credit-recovery program at Northridge during the summer of 2010. See, e.g., Ex parte Trottman, 965 So. 2d 780, 783 (Ala. 2007) (explaining that "[e]ducating students includes not only classroom teaching, but also supervising and educating students in all aspects of the educational process"). Under our burden-shifting process, Langston then had the burden of

demonstrating that Blunt acted willfully, maliciously, fraudulently, in bad faith, or beyond her authority.

Langston contended that Blunt acted beyond her authority by failing to follow detailed rules for supervising students, particularly regarding when students could leave the classroom before class ended and the procedures for leaving. Specifically, Langston argued that Blunt violated rules from three sources by allowing Crawford to leave on June 28, 2010, in the manner he did to get lunch. The three sources are: (1) the 2010 Summer Programs Employment Handbook and Guide ("the summer-programs handbook"); (2) the resource guide; and (3) the faculty handbook. In this petition, Blunt contends that the rules upon which Langston relied are either not specific enough to limit Blunt's discretion or simply were not in force during summer school in 2010. We will examine the parties' arguments pertaining to each source.

A. The Summer-Programs Handbook

The summer-programs handbook contains a page titled "High Hopes Summer Tutorials & Credit Recovery Program." That page provides a brief description of the credit-recovery program, the cost for enrollment, the staff work hours, instructional

hours, and salary information for teachers in that program. The summer-programs handbook lists the "instructional hours" as "10:00 a.m. - 3:00 p.m."

In the trial court, Langston contended that Blunt acted beyond her authority by changing the instructional hours for her summer-school class without permission from the TCS Board of Education because it was undisputed that Blunt held her class from 8:00 a.m. until 12:00 p.m. rather than during the instructional hours stated in the summer-programs handbook. Langston argues that if Blunt had maintained the correct instructional hours, "Crawford would have still been sitting in the classroom at 11:14 [a.m.] instead of getting lunch for Blunt." Langston's brief, p. 20.

Blunt counters that she received permission to alter the instructional hours from Robert Coates, then TCS director of secondary education. Coates testified that he did not "recall specifically" giving Blunt permission to change her instructional hours but that "[i]t would not have been out of the ordinary for those hours to change." Coates explained that the reason it would not be unusual was that

> "you had flexibility at different sites. You have different numbers of students and you have different

> number of teachers. So there were some teachers who because of the students that were coming may have taught from 8:00 to 12:00 and there may have been teachers who flexed their schedule from 1:30 to 3:00. But we did allow the sites to make some adjustments in order to accommodate students and their individual schedules."

When he was specifically asked whether the instructional hours had changed, Coates testified:

> "A. I know the -- the instructional hours, I don't know if we officially changed those from 8:00 to 12:00. But during the summer, we will have students who can't either come at certain hours or have work schedules that will conflict. We do allow a lot of flexibility because there are students who can only come in the afternoons, students that can only come in the morning. Some students work in the mornings, some students work in the afternoons. So to maximize participation, we are allowed a lot of flexibility in the instructional hours."

In short, Coates repeatedly testified that "[t]he idea behind the summer programs is to accommodate the students. They [the teachers] would have had the flexibility to make the changes to accommodate the students that they were serving."

Dr. Isaac P. Espy, Jr., principal of Northridge at the time of the accident, testified that his understanding was that Coates had "approved an adjustment in school hours" for the summer-school programs but that he did not recall seeing anything in writing confirming the change.

Sherri Shuttlesworth, a teacher at Northridge at the time of the accident and now an assistant principal at Northridge, testified that she taught in the summer-school programs during the summer of 2009. She stated that, during that summer, the instructional hours were "either 9:00 to 1:00 or 8:00 to 12:00."

In addition to testimony from the foregoing witnesses, Earnestine Tucker, a TCS Board of Education member at the time of the accident, testified that such a change in instructional hours would not be a violation of Board policy "[b]ecause there is some flexibility based on the individual needs of the schools and just so it is within the range of meeting those hours there is some discretion that has to be allowed within the framework of the policy."

Nothing in the summer-programs handbook indicates that the instructional hours could not be altered for the benefit of the students; it simply lists the instructional hours without any further explanation. In fact, both Espy and Coates testified that the listing of the instructional hours was primarily for the benefit of telling teachers the number of hours for which they would be compensated during the summer

session, not as a mandate for how long students were to remain in class. Indeed, the rest of the information on the page of the summer-programs handbook addressing the credit-recovery program focuses on teacher pay; nothing details teacher supervision of students in the program. Thus, all the evidence presented indicates that Blunt did not violate a detailed policy by scheduling different instructional hours.

Moreover, Blunt, Espy, and Shuttlesworth testified that students enrolled in the summer-school programs could leave class whenever they had completed their work for the day. Michael Daria, executive director of personnel for TCS at the time of the accident and the current superintendent of TCS, confirmed that it was also his understanding that summer-school students could leave class whenever they wished "subject to the classes they're in and what [the teachers] have established for the operations." Langston presented no evidence contradicting that allowing students to leave class was the regular practice during the summer session.

It is undisputed that on June 28, 2010, Crawford had finished his school work for the day when he told Blunt that he was leaving class. Thus, even if Blunt had used the

instructional hours stated in the summer-programs handbook, Crawford still would not have been prohibited from leaving when he did. In other words, no effective violation of a rule in the summer-programs handbook occurred.

B. The Resource Guide

In the trial court, Langston contended that Blunt acted beyond her authority by allowing Crawford to leave school without checking out according to the procedure dictated in the resource guide. Subsection J of the "Student Attendance Policy" section of the resource guide addresses "Check-Out from School." Subsection J.1. states: "Students who leave school for any reason must check out through the principal's office." It is undisputed that Crawford did not check out through the principal's office before he left the Northridge campus on June 28, 2010. Langston contends that Blunt failed to enforce this detailed rule and that, in failing to do so, she acted beyond her authority and is therefore not entitled to State-agent immunity.

Blunt argues that the rule stated in subsection J.1. of the "Student Attendance Policy" section in the resource guide was not in force during the summer session. Blunt contends

that the check-out policy described in subsection J applied only during the academic year, not during the summer session. Blunt testified that none of her students checked out through the principal's office during summer school. Blunt's testimony was supported by testimony from Coates, Daria, and Espy. Coates testified that in the summer programs, "when students completed the work for the day, I believe they were checked out by the teachers, not through the principal's office." Daria testified that "[t]his document [the resource guide] guides checking in and checking out for the defined 180 days as set forth in this student/parent resource guide and code of student conduct." Espy testified that "several" sections of the resource guide "would not have been applicable to the summer program." Among the sections Espy testified did not apply during the summer session were "tardies, checking-in and checking-out of school," which he testified "would not apply outside the regular school year." Indeed, Espy testified that, because the summer-school programs were voluntary, he was not aware of "any policy by the [TCS] School Board that would restrict a student's presence or attendance in any summer program." Espy also observed that "[t]here is

no regulation in [the resource guide] that references a child being required to attend a program outside of the regular school year."

In contrast, Langston did not present any testimony or evidence indicating that students who attended the summer programs at Northridge (or any other City of Tuscaloosa school) in 2010 checked out of school by first going to the principal's office. Instead, Langston asserts that several witnesses, including Blunt, Coates, Tucker, and Espy, offered contradictory testimony concerning whether the resource guide applied during the summer programs. He points to instances in which those witnesses stated that the student code of conduct, included in the resource guide, applied in the summer programs.

However, a closer examination reveals that the witnesses merely made a distinction between the administrative procedures provided in the resource guide and the rules and punishments dictated in the student code of conduct. As Espy explained, "students are subject to the Student Code of Conduct when they're on school property or a school-sponsored event," but several policies listed in the resource-guide

portion of the document clearly applied only to the academic year, which consisted of 180 days.

The resource guide itself supports the foregoing distinction. After a brief message from then TCS Superintendent Joyce Levey to "Parents, Faculty, and Staff," the resource guide begins with the observation that "[o]ur students spend a minimum of six hours a day in school and our school year is 180 days." The next page provides the "Tuscaloosa City Schools 2009-2010 School Year Calendar Board Approved 11/18/2008," which lists the day "Students return to school" as "August 11, 2009," and the "Last Day for Students" as "May 27, 2010." The section titled "School Opening & Closing Times" states that the "[o]fficial start time and end times for school" with respect to "High School" are "8:00 a.m. - 3:20 p.m." The "Student Attendance Policy" section contains several sections, such as "A. Absence from School," "D. Early Warning Program for Unexcused Absence," and "E. Excessive Unexcused Absences," that make sense only in the context of the academic school year because of the compulsory attendance requirement in the academic year. A section titled "High School Tardies" is similarly limited, stating that "High

school students who accumulate five (5) or more check-in/check-outs during the term will be required to submit an official statement from the courts or a physician explaining each absence for the remainder of the term." (Emphasis added.) This portion of the resource guide also states: "The official school day for high school students is from 8:00 AM until 3:20 PM. Students arriving at school after 8:00 AM are tardy."

The foregoing excerpts from the resource guide illustrate that several portions of the document applied only during the 180-day school academic year, and not during the summer programs. The "Student Attendance Policy" and "High School Tardies" sections in particular address requirements for students during the academic year.

Given the context of subsection J.1. of the "Student Attendance Policy" section, as well as the testimony from multiple witnesses concerning its applicability, the evidence before us dictates the conclusion that the requirement that "[s]tudents who leave school for any reason must check out through the principal's office" applied only during the academic year and not during the summer program that Crawford

was attending on June 28, 2010. Therefore, Blunt did not act beyond her authority by failing to require Crawford to check out through the principal's office before he left the school campus.

C. The Faculty Handbook

In the trial court, Langston contended that Blunt acted beyond her authority by allowing Crawford to go to the Northridge parking lot and to his car without having proper authorization to do so. A section of the faculty handbook titled "M.1. Faculty and Staff Parking" provides: "11. Students are not to go to the parking lot or their vehicles during the school day without a written pass from an administrator and/or security personnel." It is undisputed that Crawford did not have a pass from an administrator or security personnel before he went to the parking lot and got into his car to go to McDonald's. Langston contends that Blunt failed to enforce this detailed rule and that, in failing to do so, she acted beyond her authority and, therefore, is not entitled to State-agent immunity.

In particular with respect to Blunt's alleged violation of the rule stated in the faculty handbook, Langston contends

that the situation is "strikingly similar in the facts, argument, and analysis" to the situation in Ex parte Yancey, 8 So. 3d 299 (Ala. 2008). Yancey involved injuries sustained by Charles A. Coker, an 11th grade student at Southside High School in Etowah County ("Southside"), which occurred when Coker was ejected from the bed of a pickup truck on the grounds of Southside. Coker alleged that he was in the pickup truck because Southside's head football coach and athletic director, Brett Yancey, had instructed Coker and other students in Yancey's first block weight-lifting class to clean the weight room, locker room, and bathrooms located in the field house and "to carry the filled trash barrels to the school's [D]umpsters, which were located behind the school's cafeteria, a relatively short distance from the field house." 8 So. 3d at 301. Another student in the class, Matthew Messer,

> "retrieved his pick-up truck from a campus parking lot and drove it to the field house, where the students loaded the trash barrels onto the pick-up truck. Although Yancey testified that he routinely allowed students to use their pick-up trucks to haul the trash barrels to the [D]umpsters, he did not specifically instruct the students -- including Messer on this occasion -- to use one of their vehicles to carry the trash barrels to the [D]umpsters."

Id. (footnote omitted). Coker's injuries occurred when Messer was driving the pickup truck to the Dumpsters and the truck hit a dip in the road. The Court related:

> "Yancey presented the affidavit of Jerome Wilkens, a retired member of the Board, who testified that the Board had no written policy prohibiting students from leaving the school campus in their vehicles during school hours. Yancey stated that students were permitted to leave campus during school hours to attend vocational school, baseball practice, and softball practice. However, the student handbook in effect at the time of the incident provides under its general rules provision that '[s]tudents are not permitted to go to a car or parking lot without permission of Principal or Assistant Principal.' The student handbook also provides the following with regard to parking rules: 'All students will come immediately into the school after parking their cars, and shall not return to the car until the end of the school day without permission from the administration. When possible an administrator will accompany the student to the car.' Yancey stated that he was provided a copy of the student handbook but that he had not read it. ..."

8 So. 3d at 302-03 (emphasis added).

Coker contended that Yancey was not entitled to State-agent immunity because he had not followed the rule in the student handbook concerning students' going to their cars during the school day. One of Yancey's arguments with respect to the applicability of the student handbook has some relevance to this case. He argued that the student handbook

governed only students, not faculty.[5] This Court flatly rejected that argument.

> "The student handbook was provided to both students and faculty alike. Although the handbook primarily references student conduct, it nonetheless establishes by implication limits on the faculty's authority. In the context of a student-teacher relationship, the teacher assumes the role of the authority figure. In order to function in that role, the teacher assumes a duty pursuant to the handbook to ensure that the student abides by the limits placed on the conduct by the handbook. For example, if the handbook limits the student's conduct by forbidding the student from returning to his or her vehicle in the parking lot during the school day, the teacher's authority with respect to permitting or directing the student's conduct must be correspondingly limited. Otherwise, the teacher would become complicit in the violation of the rule, and the rule would be rendered meaningless. Accordingly, we conclude that the student handbook established limits on Yancey's authority in exercising his judgment in educating students."

8 So. 3d at 306. The Court ultimately concluded that Yancey's authorizing the students to retrieve their vehicles from the parking lot and to use their vehicles to haul trash was a

[5]Yancey also argued that, as director of athletics, he was an "administrator" and that, therefore, he was allowed to give the students permission to use their vehicles during the school day. The Court determined that Yancey could not plausibly be considered an administrator as that term was understood in the school system.

"clear violation" of rules in the student handbook, 8 So. 3d at 307, and it accordingly denied the petition.

Despite some similarity to the present case, one fact in Yancey makes a crucial difference in analyzing the application of State-agent immunity to educators. In Yancey, it was undisputed that Yancey had been given the student handbook and that it governed student behavior on school grounds. In contrast, in this case Blunt unequivocally testified that she was "not familiar with [the faculty handbook] and [had] never been instructed by any administrator at Northridge or other Board member or employee that I was expected to follow the provisions of [the faculty handbook] during the summer of 2010." Instead, the handbook with which Blunt was familiar "was issued by Dr. Espy to each teacher and staff member at Northridge at the beginning of each academic year and was later turned in to the school's office at the end of each academic year."[6]

The testimony of several other witnesses echoed Blunt's testimony. Espy testified "I don't believe I have ever seen

[6]It is undisputed that the faculty handbook issued by Espy was not submitted into evidence in the trial court.

this document" when he was asked to identify the faculty handbook. More specifically, Espy was asked:

> "Q. So what we have here may not be the 2009 to 2010 Faculty Handbook?
>
> "A. It is not.
>
> "Q. Okay. Do you feel a hundred percent certain of that?
>
> "A. One hundred percent."

Shuttlesworth testified that she "did not recall" there being a faculty handbook for the summer of 2009 when she was a teacher for the summer programs but that there was a faculty handbook for the school academic year. With respect to the latter handbook, she stated: "On the last day of school we turned in our faculty handbooks to the secretary, and we received the next school year's handbook when we returned in August."

Debbie Kizzire, who was the secretary at Northridge at the time of the accident and who had the job of compiling the handbook for the faculty, testified that she would collect the handbooks from teachers at the end of the academic year and would update them throughout the summer and then give them to the teachers the first day of school the following academic

year. When shown the faculty handbook, Kizzire testified: "That's not the handbook I make. ... Mine has a front page that would have probably Northridge Jaguars, a picture of something and a Jaguar, something every year. And it would have, like I said, the bell schedule, lunch schedule." Kizzire stated that she had "no idea" where the faculty handbook came from.

Marcia Irvin, a librarian who started at Northridge in 2003, testified that she did recognize portions of the faculty handbook and that she had even written the part of it that addressed the library. However, Irvin stated that it was a document that had been used when Margaret O'Neal was the principal at Northridge in 2004. O'Neal had wanted it placed online "for faculty knowledge of forms and things like field trip forms and medical forms and leave forms and she wanted it to be electronic. She wanted it to be online so that teachers did not have to hunt around." Irvin further explained:

> "We only used it when Ms. O'Neal was there and I think it was still online when Ms. [Jennifer] Box who followed Ms. O'Neal, she was the acting principal for like a year. I think it was still online then. But we did not have it or I don't remember it being online [after that]. But Mr. [Eddie] Jaynes came after that [as principal], he did not use the handbook."

Irvin confirmed that when Espy became principal "he initiated the three ring binder notebook and nothing was online at that point in time. He gave that three ring binder out at the beginning of every year and took it up at the end of every year."

A review of the faculty handbook itself reveals it to be what perhaps could best be described as a chaotic document. The table of contents does not closely correspond to the sections in the document. The document lists dates for events as early as 2003 and as late as 2010. For example, one section titled "Attendance Dates - Need new info for sch yr 2007-08" lists the date "School Opens" as "August 11, 2005," and the "Last Day for Students" as "May 25, 2006." A later section called "Calendar for the Year" lists dates for the 2007-2008 academic year. Another later section lists "Teacher and Non-Administrative Staff Supervision Assignments Northridge High School 2005-2006." One page lists a table of contents for "Grading" for the 2007-2008 academic year, yet the page that immediately follows it lists dates on which "Progress Reports" would be issued for the 2009-2010 academic year. Several pages later is a section addressing "Staff Development" for

the "2003-2004 School Year." The document also includes a "Tuscaloosa Schools Mentoring Guide 2005-2006."

From all the submitted evidence, the one conclusion that can be drawn is that whatever the faculty handbook may represent, it was not a document that administrators or faculty members at Northridge recognized as being in force at any point in 2010.[7] The inapplicability of the faculty handbook is analogous to the situation presented in Ex parte Trottman, 965 So. 2d 780 (Ala. 2007). Trottman featured claims of negligence and wantonness, as well as negligent

[7]Langston emphasizes in his brief that the trial court denied Blunt's motion to strike the faculty handbook based on a lack of authentication and that Blunt "could not and has not appealed this evidentiary ruling ...." Langston's brief, p. 22 n.6. In doing so, Langston implies that we cannot review the applicability of the faculty handbook to Blunt. However, although it is true that "[m]andamus review of the denial of a summary-judgment motion 'grounded on a claim of immunity' is an exception to the general rule against interlocutory review of the denial of summary-judgment motions," it is also true that, "[i]n those exceptional cases, '[w]e confine our interlocutory review to matters germane to the issue of immunity.'" Ex parte Simpson, 36 So. 3d 15, 22 (Ala. 2009) (quoting Ex parte Hudson, 866 So. 2d 1115, 1120 (Ala. 2003) (final emphasis added)). Whether the faculty handbook was a document with which Blunt should have been familiar and was in force at the time she was supervising Crawford are clearly matters germane to the issue of immunity. Reviewing the trial court's order on summary judgment with respect to Blunt's immunity requires an examination of the applicability of the faculty handbook to Blunt.

and/or wanton supervision or training, filed by T.W. on behalf of her daughter, J.T., against a school principal, an instructional assistant, and a school secretary. The suit arose out of an incident in which J.T. was checked out of school and subsequently was sexually assaulted by an 18-year-old former student of the school, C.W., who had falsely represented to the defendant instructional assistant at the time of check-out that he was J.T.'s older brother. T.W. contended that, if the defendants had followed the check-out procedures stated "in the 1998–1999 district-wide handbook and the proposed 1999–2000 Mount Olive Elementary School handbook," 965 So. 2d at 785, J.T. would not have been permitted to leave with C.W.

However, this Court concluded that T.W. had not established that there was a check-out policy in place during the time of the incident.

> "Ross and Trottman ... presented evidence indicating that there was not an official checkout policy in place at Mount Olive Elementary School at the time of the incident. They submitted an affidavit from Lee Henderson, the superintendent of education for the Russell County Board of Education at the time of J.T.'s assault. He stated:
>
> "'The Russell County Board of Education did not have any policies,

> procedures, rules or regulations in place regarding the checking out of students during the 1999-2000 school year. While the Russell County Board of Education did not require each school to have its own handbook during the 1999-2000 school year, we were in a transition period where each school was in the process of formulating its own handbook addressing the specific needs of the school. During this school year, each principal, including Mr. Ross, had the authority to put into effect those procedures which best served the circumstances of their community and school. Each principal also had the authority to delegate the responsibility for checking students out.'
>
> "Thus, Henderson's affidavit establishes that there was not a district policy regarding checking students out of school. Additionally, Ross and Trottman presented evidence through the depositions of Ross and other faculty and staff working at Mount Olive Elementary School during the 1999-2000 school year indicating that although there was a proposed 1999-2000 handbook for Mount Olive Elementary School, the handbook was never adopted and there was no school policy regarding checking students out of school. ...
>
> "In light of the foregoing, T.W. has not established that a specific checkout policy existed at Mount Olive Elementary School at the time of the incident; thus, she has not established that a genuine issue of material fact exists as to whether Ross and Trottman exceeded the scope of their discretion by permitting J.T. to leave the school grounds with C.W."

Id. at 785-86 (footnotes omitted).

In this case, the faculty handbook is similar to the "proposed" handbook in Trottman because Langston simply failed to present any evidence indicating that the faculty handbook was a document that anyone at Northridge referred to for guidance in 2010. Accordingly, Blunt was not bound by its rule that "[s]tudents are not to go to the parking lot or their vehicles during the school day without a written pass from an administrator and/or security personnel."

In sum, Langston failed to demonstrate the existence of a detailed rule binding upon Blunt that would establish that she acted beyond her authority when she allowed Crawford to leave Northridge at the time and in the manner he did on June 28, 2010. In other words, Langston did not establish that a genuine issue of material fact exists as to whether Blunt exceeded the scope of her discretion in supervising students when she permitted Crawford to leave the school grounds at 11:14 a.m. without checking out through the principal's office or obtaining written permission from an administrator or security personnel to access his car in the campus parking lot. Therefore, Blunt is entitled to State-agent immunity from Langston's claims of negligence and

wantonness for failing to follow "policies and procedures" of TCS, which failure allegedly proximately caused the injuries sustained by Matthew and Joshua.

IV. Conclusion

Langston failed to demonstrate the existence of a detailed rule binding upon Blunt that would establish that she acted beyond her authority in supervising students when she allowed Crawford to leave Northridge at the time and in the manner he did on June 28, 2010. Therefore, Blunt was entitled to State-agent immunity from Langston's claims of negligence and wantonness pertaining to her alleged violation of a TCS policy or procedure.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, Stewart, and Mitchell, JJ., concur.

Mendheim, J., concurs specially.

MENDHEIM, Justice (concurring specially).

I write separately to note that I read the main opinion to be granting Sonia Blunt's petition for a writ of mandamus only with respect to Keith Langston's claims that concern Blunt's actions related to educating students, for which she is entitled to State-agent immunity. As I explain below, it is apparent from the submissions to the trial court provided to us in the petition that there is one claim that does not fall into this category, i.e., a claim that concerns Blunt's responsibility for Marcus Crawford's actions, for which State-agent immunity is not available.

Langston's response in opposition to Blunt's summary-judgment motion contained a section in which Langston argued that "Crawford was acting as a servant of Blunt for purposes of vicarious liability." In that section, Langston contended that, because Crawford had testified that Blunt gave him money and told him to go to a McDonald's fast-food restaurant to get lunch for her, substantial evidence existed that Crawford was acting as a servant of Blunt at the time the accident occurred and that Blunt was therefore "liable under the theory of vicarious liability even for unlawful conduct of Crawford

while he was engaged in the agency relationship for her benefit."

In her reply, Blunt provided two arguments in response to Langston's contention that she was vicariously liable for Crawford's actions. First, she argued that, "even assuming arguendo that he was running an errand for Ms. Blunt, his decision to commit the felony of reckless manslaughter was clearly outside of the line and scope of his duties. As a result, Ms. Blunt cannot be held liable for his criminal actions." Second, she contended that the trial court could not "find that a factual dispute exists between Mr. Crawford's criminal trial testimony and the testimony of Ms. Blunt" because in his testimony during his criminal trial Crawford simply testified that "a teacher" told him to get lunch for the teacher at McDonald's. Blunt argued that it could not be inferred that Blunt was the teacher referred to in Crawford's testimony.

On December 1, 2016, Langston submitted a motion seeking to file a supplemental affidavit from Crawford. In the supplemental affidavit, Crawford named Blunt as the teacher who gave him money and told him to get lunch for her at

McDonald's on June 28, 2010. On December 7, 2016, Blunt and Patsy Lowry filed a motion to strike Crawford's affidavit. In that motion, they contended that the trial court should strike the affidavit because, they said, it contained contradictory testimony.

As the main opinion notes, Langston later filed a supplemental response to the summary-judgment motion. Blunt filed a reply to that response specifically addressing the new contention asserted in Langston's amended response, but otherwise chose to stand on her previously filed response.

Conspicuously absent from any of Blunt's submissions related to her summary-judgment motion was any argument that Langston had not pleaded a claim of vicarious liability in his complaint. To be clear, Langston did not state a claim of vicarious liability in his complaint. However, after he raised vicarious liability in his response to the summary-judgment motion, Blunt addressed the issue with arguments on the merits. Blunt did not object that the issue of vicarious liability should not be considered because the facts supporting it and a claim asserting it were not alleged in Langston's complaint. Likewise, when Langston submitted a

belated affidavit from Crawford naming Blunt as the teacher who had given him money and told him to get her lunch at McDonald's -- the clear purpose of which was to support Langston's argument for vicarious liability -- Blunt's motion to strike Crawford's affidavit did not object that Crawford's testimony should be rejected because Crawford's asserted facts were not alleged in Langston's complaint. In short, Blunt never contended in the trial court in either of her two replies to Langston's summary-judgment response or in her motion to strike Crawford's affidavit that Langston never pleaded vicarious liability in his complaint.

> "It is well settled law in Alabama that implied consent of the parties can be found when an opposing party fails to object to the introduction of evidence raising the disputed issue initially. International Rehabilitation Associates Inc. v. Adams, 613 So. 2d 1207, 1213 (Ala. 1993); Bischoff v. Thomasson, 400 So. 2d 359 (Ala. 1981). See McDuffie v. Hooper, 294 Ala. 293, 315 So. 2d 573 (1975); Rafield v. Johnson, 294 Ala. 235, 314 So. 2d 695 (1975). As noted in the Committee Comments to Rule 15, Ala. R. Civ. P., 'Under the rule where evidence is introduced or an issue raised with the express consent of the other party, or without objection from him, the pleadings "shall" be deemed amended to conform to such evidence.'"

Hosea O. Weaver & Sons, Inc. v. Towner, 663 So. 2d 892, 896-97 (Ala. 1995). Because Blunt failed to object to Langston's

introduction of evidence and arguments concerning vicarious liability and instead addressed the merits of that claim, the complaint was deemed amended to conform to the evidence.[8]

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[8]I note that there is a conflict of authority in our cases concerning whether Rule 15(b), Ala. R. Civ. P., applies only at trial or if pleadings can be amended through implied consent of the parties on motion for summary judgment. In Rector v. Better Houses, Inc., 820 So. 2d 75, 79 (Ala. 2001), decided in June 2001, the Court stated that "where there is no trial, Rule 15(b) cannot apply." However, in Ex parte Neese, 819 So. 2d 584 (Ala. 2001), decided in October 2001, a division of the Court consisting of Justices who had all concurred in Rector, concluded that, under Rule 15(b), an open-and-obvious defense raised by the defendant in her summary-judgment motion in a slip-and-fall case was properly considered by the trial court because "[t]here is no evidence in the record that [the plaintiff] ever objected to the introduction of the open-and-obvious defense at any time before the entry of the summary judgment." 819 So. 2d at 589.

The conflict is not unique to this Court. Federal courts are likewise divided on the issue whether Rule 15(b), Fed. R. Civ. P., applies only at trial or if the principle of amended pleadings through implied consent of the parties applies at the summary-judgment stage. See, e.g., Ahmad v. Furlong, 435 F.3d 1196, 1203 n.1 (10th Cir. 2006) (applying Rule 15(b) to summary judgment but noting many conflicting cases among the federal circuits); Gilmour v. Gates, McDonald & Co., 382 F.3d 1312, 1315 (11th Cir. 2004) (stating that "[a] plaintiff may not amend her complaint through argument in a brief opposing summary judgment"); Handzlik v. United States, 93 F. App'x 15, 17 (5th Cir. 2004) (not selected for publication in the Federal Reporter) (observing that "[i]n this circuit ... it seems that Rule 15(b) may apply at the summary judgment stage"); Baker v. Chicago Fire & Burglary Detection, Inc., 489 F.2d 953, 955 n.3 (7th Cir. 1973) (finding that, "[i]n a proper case, where a motion for summary judgment is supported by matters outside the pleadings, the court could deem the

A claim of vicarious liability does not seek to hold Blunt liable for her act of allegedly failing to keep Crawford from leaving the school at the time and in the manner he did -- an act for which Blunt is clothed with State-agent immunity because it involves an aspect of her educating students. Instead, it seeks to hold Blunt liable for Crawford's act of hitting the vehicle being driven by Susan Langston. See, e.g., Nationwide Mut. Ins. Co. v. Hall, 643 So. 2d 551, 556 (Ala. 1994) (defining "vicarious liability" as "liability that the law imposes on one party for the wrongful conduct of another"). This act does not implicate educating students, and Blunt never presented in the trial court, nor does she assert in her petition, an argument that this act involves a another function that would entitle Blunt to State-agent immunity. Accordingly, Blunt was not entitled to a summary judgment based on State-agent immunity with respect to Langston's claim of vicarious liability, and the main opinion does not purport to address that claim in any way.

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answer amended to conform to the proof offered").