

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

JOHN PARKS,

Plaintiff,

v.

**LAKE OSWEGO SCHOOL DISTRICT,
LAKE OSWEGO SCHOOL BOARD,
OREGON SCHOOL ACTIVITIES
ASSOCIATION, PORTLAND PUBLIC
SCHOOLS, and MARSHALL HASKINS,**

Defendants.

Case No. 3:24-cv-1198-SI

ORDER

Michael H. Simon, District Judge.

Plaintiff, John Parks, brought this action against defendants Lake Oswego School District, Lake Oswego School Board (collectively, with Lake Oswego School District, the “School Defendants”), Oregon School Activities Association (“OSAA”), Portland Public Schools (“PPS”), and Marshall Haskins (“Haskins”). Against the School Defendants, Plaintiff asserted claims under 42 U.S.C. § 1983 alleging violations of Plaintiff’s rights under the First and Fourteenth Amendments. Against OSAA, PPS, and Haskins, Plaintiff asserted claims of common law defamation. The School Defendants, PPS and Haskins, and OSAA moved

separately for summary judgement under Rule 56 of the Federal Rules of Civil Procedure. ECF 73, 78, 80.

On May 26, 2026, United States Magistrate Judge Jolie Russo issued Findings and Recommendation (“F&R”) in this case, recommending that the Court grant all defendants’ motions for summary judgment and enter judgment in their favor. ECF 100 (under seal). On August 28, 2026, the Court adopted in part Judge Russo’s F&R. ECF 106 (not under seal). The Court granted Haskins’ and PPS’s Motion for Summary Judgment, granted OSAA’s Motion for Summary Judgment, and granted in part and denied in part the School Defendants’ Motion for Summary Judgment. *Id.* Specifically, the Court denied the School Defendants’ motion as to Plaintiff’s claim of First Amendment retaliation but granted it as to Plaintiff’s claim under the Fourteenth Amendment. *Id.*

On September 8, 2026, the School Defendants filed a motion for reconsideration, requesting that the Court reconsider the portion of its August 28, 2026, Order addressing Plaintiff’s claim of First Amendment retaliation. ECF 107. According to the School Defendants, Judge Russo’s F&R found that the School Defendants’ were entitled to prevail on their “same action” defense to Plaintiff’s claim of First Amendment retaliation for two independent reasons: (1) Plaintiff’s constitutionally unprotected conduct concerning the State Championships; and (2) the testimony of athletic director Christopher Coleman (“Coleman”) that he would not offer Plaintiff a new coaching contract based on his separate, year-end evaluation of Plaintiff’s coaching performance. According to the School Defendants, although the Court’s Order on August 28, 2026, expressly declined to adopt Judge Russo’s first determination for the reasons stated in that Order, the Order neglected to address Judge Russo’s second, independent determination, regarding Coleman’s statement.

The Court does not read Judge Russo’s F&R as having relied on Coleman’s review as a separate and independent reason to accept the School Defendants’ “same action” defense. Judge Russo noted the fact of Coleman’s review but did not analyze the effect of the review or how it should be treated for purposes of a First Amendment retaliation claim and the defense of “same action.” Nonetheless, the Court will now review *de novo* whether Coleman’s statement is sufficient to support the School Defendants’ motion for summary judgment on that claim.

As explained in the Order dated August 28, 2026, a defendant can avoid liability for a claim of First Amendment retaliation by showing “that it would have taken the same actions in the absence of the plaintiff’s expressive conduct. A plaintiff cannot establish unconstitutional retaliation if the same decision would have been reached absent the protected conduct, even if protected conduct played a part, substantial or otherwise, in motivating the government’s action.” *Riley’s Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 721 (9th Cir. 2022) (quotation marks and citation omitted).

This “causation inquiry is, however, purely a question of fact.” *Robinson v. York*, 566 F.3d 817, 825 (9th Cir. 2009); *see also Eng v. Cooley*, 552 F.3d 1062, 1072 (9th Cir. 2009). A court may decide this issue at summary judgment only if, construing the facts in the light most favorable to the plaintiff, the defendants have “show[n] more than that they *could* have punished the plaintiff[] in the absence of the protected speech; instead, the burden is on the defendants to show through evidence that they *would* have punished the plaintiff[] under those circumstances.” *Pinard v. Clatskanie Sch. Dist. 6J*, 467 F.3d 755, 770 (9th Cir. 2006) (emphasis in *Pinard*) (quotation marks and citation omitted); *see also id.* at 771 (“[T]he defendants are not entitled to summary judgment unless they can show that they would have imposed a permanent suspension even in the absence of the plaintiffs’ petition and complaints.”).

In their motion for reconsideration, the School Defendants rely on a statement in Coleman’s declaration that “[b]ased on my overall performance review of plaintiff during the 2023-2024 track season, as documented in the attached performance review . . . , I was not going to offer Mr. Parks another contract as the Lake Oswego track coach.” ECF 75 at 2. This fails to meet Defendants’ high burden, however, because the record reflects no *contemporaneous* statements made by Coleman to that effect. Coleman completed his year-end performance review, ECF 75-1, on June 10th, which was more than two weeks after Haskins emailed his complaint and two days *before* Principal Colyer issued her memorandum summarizing her findings regarding Plaintiff’s purported misconduct and drafted Plaintiff’s non-renewal letter. Notably, although the non-renewal letter, ECF 1-5, stated that it was based on events from the “past track season,” the letter focused only on Plaintiff’s conduct toward the transgender athlete without mentioning Coleman’s performance review. The non-renewal letter then concluded by stating that the non-renewal of Plaintiff’s employment was “[i]n light of these findings.” *Id.* Additionally, the performance review is not uniformly negative and makes no statements about whether Plaintiff’s employment will or will not be renewed. Further, Plaintiff cites testimony from Principal Colyer’s deposition “that she had not ever ‘received’ the performance review, had only seen it ‘around the date’ of [Plaintiff’s] termination, and did ‘not recall’ for sure if she was aware of it before she . . . declined to renew [Plaintiff’s] contract.” ECF 102 at 15 (quoting Colyer Dep. 79:2-80:15). Thus, a reasonable jury might decide not to accept at face value the statements in Coleman’s declaration.

It is a reasonable inference, at summary judgment, where a court must view all facts in the light most favorable to the nonmoving party and draw all reasonable inferences in that party’s favor, that Coleman may not have mentioned his performance review of Plaintiff to

Colyer before Colyer's decision to not to renew Plaintiff's contract because Coleman did not consider the performance review, by itself, to be sufficient grounds not to renew Plaintiff's contract.

The School Defendants' reliance on Coleman's testimony and year-end performance review of Plaintiff ultimately may persuade a jury. But at summary judgment, when considering a highly fact-specific "same action" defense, the Court concludes that the School Defendants have not met their high burden showing that there is no genuine dispute of material fact as to whether the performance review necessarily *would* have been sufficient without the purportedly protected email sent by Plaintiff to OSAA to support the School Defendants' non-renewal of Plaintiff's contract.¹

CONCLUSION

The School Defendants have not met their burden to show that reconsideration is warranted of the Court's decision denying their motion for summary judgment as to Plaintiff's First Amendment retaliation claim. The Court DENIES Lake Oswego School Board and Lake Oswego School District's F.R.C.P. 54 Motion for Reconsideration. ECF 107.

IT IS SO ORDERED.

DATED this 17th day of September, 2026.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge

¹ To the extent that there is any ambiguity regarding the holding of the F&R on this issue, the Court declines to adopt that portion of the F&R addressing the "same action" defense to Plaintiff's claim of First Amendment retaliation with regard to Coleman's declaration and his year-end performance review of Plaintiff's work.