

**Jonathan M. Radmacher**, OSB No. 924314  
E-Mail: [jonathanr@mcewengisvold.com](mailto:jonathanr@mcewengisvold.com)  
McEwen Gisvold LLP  
1100 SW 6<sup>th</sup> Avenue, Suite 1600  
Portland, OR 97204  
Phone: (503) 226-7321  
Fax: (503)243-2687

Of Attorneys for Defendant  
Oregon School Activities Association

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**JOHN PARKS,**

Plaintiff,

v.

**LAKE OSWEGO SCHOOL DISTRICT;  
LAKE OSWEGO SCHOOL BOARD;  
OREGON SCHOOL ACTIVITIES  
ASSOCIATION; PORTLAND PUBLIC  
SCHOOLS; and MARSHALL HASKINS,  
individually and in his representative  
capacity for OREGON SCHOOL  
ACTIVITIES ASSOCIATION and  
PORTLAND PUBLIC SCHOOLS,**

Defendants.

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

**DEFENDANT OREGON SCHOOL  
ACTIVITIES ASSOCIATION’S MOTION  
FOR SUMMARY JUDGMENT**

**Certificate of Conferral**

Pursuant to LR 7-1, Defendant Oregon School Activities Association’s (“OSAA’s”) counsel certifies that he has conferred about this motion with counsel for Plaintiff, but the parties have been unable to resolve this dispute without court assistance.

### **Motion for Summary Judgment**

Pursuant to Fed. R. Civ. P. 56, the OSAA requests that this Court grant Defendant's summary judgment and dismiss Plaintiff's claims with prejudice, because there is no question of fact that the OSAA cannot be held liable for the letter written by Marshall Haskins to Lake Oswego High School: Mr. Haskins was neither an employee nor an agent of the OSAA; therefore, the OSAA could never be held liable for his statements. This Motion is supported by the Declarations of Peter Weber and Jonathan Radmacher, submitted herewith.

### **Standard for Summary Judgment**

Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the initial responsibility of informing the court of the basis of its motion and identifying those portions of the record which show there is no genuine issue of material fact as to any material fact and that the moving party is entitled to judgment as a matter of law. *Ormsby v. Sunbelt Rentals, Inc.*, 205 F. Supp. 3d 1204, 1209 (D. Or. 2016) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). Once the moving party meets its initial burden of demonstrating the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party to present "specific facts" showing a "genuine issue for trial." *Fed. Trade Comm'n v. Stefanchik*, 559 F.3d 924, 927–29 (9th Cir. 2009) (quoting *Horphag Research Ltd. v. Garcia*, 475 F.3d 1029, 1035 (9th Cir. 2007)). The non-moving party must go beyond the pleadings and designate facts showing an issue for trial. *Bias v. Moynihan*, 508 F.3d 1212, 1218 (9th Cir. 2007) (citing *Celotex, supra*, 477 U.S. at 324). Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial and the movant is entitled to judgment as a matter of law. *Hanson v.*

*State of Oregon*, \_\_\_ F.3d \_\_\_, Case No. 3:21-cv-780-SI, 2023 U.S. Dist. LEXIS 198 (D. Or. 2023) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)). The “mere existence of a scintilla of evidence in support of plaintiff’s position [is] insufficient” to defeat summary judgment. *Hanson v. State of Oregon*, *supra*, 2023 U.S. Dist. LEXIS at \*2 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).

### **Statement of Facts**

On May 24, 2024, Marshall Haskins wrote a letter, the contents of which Plaintiff claims are defamatory of him. [ECF 7-3] But there are no facts that would support Plaintiff’s claim that the OSAA is responsible or vicariously liable for Mr. Haskins’ statement(s).

The first paragraph of the letter is the entirety of the basis for Plaintiff’s claims that seek to hold the OSAA liable for the statements in the letter. Indeed, Mr. Parks admits that it is only what is in the letter, Mr. Haskins’ statement about serving on the OSAA’s Executive Board, and on a committee of the board, that made him allege that Mr. Haskins was writing on behalf of the OSAA. [Ex. 202, Parks Depo. at 213-216] That paragraph states:

As a representative of senior leadership for Portland Public Schools and as a member of the OSAA executive board who has been appointed as the state representative for equity, diversity, and inclusion, I was appalled, disappointed, and embarrassed for Lake Oswego and Salem-Keizer school districts because of the behavior of one of your employees.

[ECF 7-3, Depo. Ex. 122] On the face of the language, Mr. Haskins was clearly not purporting to write on behalf of the OSAA; his reference to his positions with Portland Public Schools and the OSAA simply prefaced the subject of his sentence: Mr. Haskins was appalled, disappointed, and embarrassed.

When asked by Plaintiff's counsel what he meant by what he said, Mr. Haskins explained that he wanted to make sure to lend credibility to his statement(s), based upon his experience as an administrator and professional. [Ex. 203, Haskins Depo. at 41-43] When asked about his role with the OSAA, Mr. Haskins explained that he is a volunteer for the OSAA [Haskins Depo. at 82], and that while he does not write OSAA policies, he is one of fifteen board members who vote on adding or deleting policies. [Haskins Depo. at 79]

Mr. Haskins' description of his role is consistent with the OSAA's perspective and guidelines. As explained in the Declaration of Peter Weber, the Executive Director of the OSAA, members of the Executive Board have the powers of a board – voting on policies; but it is the employees/staff, under the supervision of Mr. Weber, who carry out those policies, i.e. the OSAA acts through its management employees, not its board members. [Weber Dec. at ¶¶ 1-2, Ex. 201]

### **Points and Authorities**

Plaintiff seeks to hold the OSAA vicariously liable for the statements of a volunteer board member. There are only two available legal theories that would allow such an imposition of liability: (1) if the OSAA controlled Mr. Haskins such that *respondeat superior* liability is triggered, or (2) if Mr. Haskins was the OSAA's agent. As a matter of law, neither theory is applicable with the existing facts.

First, if the director is considered an employee (which is determined by whether the alleged employer has the right to control the conduct of the alleged tortfeasor), the tort must be committed in the scope of employment in order for the employer to be vicariously liable. There are three requirements that must be satisfied to establish that the employee's *intentional torts* (*e.g. defamation*) are within the scope of employment: first, the conduct must have "occurred

substantially within the time and space limits authorized by the employment;” second, the employee must have been “motivated, at least partially, by a purpose to serve the employer;” and third, the act must have been “of a kind which the employee was hired to perform.” *Chesterman v. Barmon*, 305 Or 439, 442, 753 P2d 404 (1988).

In *Prasnikar v. Our Savior’s Lutheran Church of Lake Oswego*, 2014 U.S. Dist. LEXIS 179712, Case No. 3:13-cv-258 (D. Or. 2014), the court granted summary judgment against the plaintiff’s claims against the defendant church, arising from a church volunteer’s sexual battery of the plaintiff, because the church neither maintained nor exercised any control over the tortfeasor. In affirming the Magistrate Judge’s Findings and Recommendations, the District Court made it clear that neither a *respondeat superior* theory, nor a vicarious agency theory of liability, could be warranted under the evidence. *Id.* at 2015 U.S. Dist. LEXIS 1431.

Second, if a director is not considered an employee, a principal-agent relationship might establish vicarious liability based upon agency. Agency “results from the manifestation of consent by one person to another that the other shall act on behalf and subject to his control, and consent by the other so to act.” *Viado v. Domino’s Pizza, LLC*, 230 Or. App. 531, 533, 217 P.3d 199 (2009). A principal is only liable for the actions of a nonemployee agent only if the agent’s actions “are within the actual or apparent authorization of the principal.” *Jensen v. Medley*, 336 Or. 222, 231, 82 P.3d 149 (2003). Apparent authority to “do any particular act can be created only by some conduct of the principal which, when reasonably interpreted, causes a third party to believe that the principal consents to have the apparent agent act for him on that matter.” *Harkness v. Platten*, 359 Or 715, 723–24, 375 P3d 521 (2016).

In *Natkin v. American Osteopathic Ass’n*, 2024 U.S. Dist. LEXIS 129577, Case No. 3:16-cv-1494 (D. Or. 2024), the court granted summary judgment against claims of vicarious

liability on the theory of *respondeat superior*, holding that there was no evidence from which a jury could conclude that the defendant had the power to control the tortfeasor. The court also reiterated its granting of a motion to dismiss any agency theory of liability, based upon the lack of a viable agency theory. *Id.* at \*12 n7.

As applied to the facts of the present case, not only did Mr. Haskins not purport to be speaking on behalf of the OSAA, his position as a volunteer board member did not give him the authority to act – his authority was to vote on policy matters as one of fifteen board members. And Plaintiff can point to no action by the OSAA that empowered Mr. Haskins to write to Lake Oswego High School on behalf of the OSAA. Because Mr. Haskins was not authorized to speak for the OSAA, was not purporting to speak for the OSAA, and was not subject to the OSAA’s control, there is no basis for Plaintiff’s vicarious liability claim against the OSAA.

### **Conclusion**

Mr. Haskins was acting within the course and scope of his employment at Portland Public Schools when he expressed his concerns to Lake Oswego High School, expressions that seem clearly to fall within an absolute or qualified privilege. But in no event are Mr. Haskins’ statements vicariously attributable to the OSAA. Plaintiff’s claims against the OSAA must be dismissed.

Dated: February 3, 2026.

MCEWEN GISVOLD LLP

By: s/ Jonathan M. Radmacher

Jonathan M. Radmacher, OSB No. 924314  
*Of Attorneys for Defendant Oregon School  
Activities Association*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of February, 2026, I e-served the within **DEFENDANT OREGON SCHOOL ACTIVITIES ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT** on the persons listed below through the Court's CM/ECF electronic filing system.

Edward Kilkullen  
Brendan Joseph Phibin  
Liberty Justice Center  
440 N. Wells St., Ste. 200  
Chicago, IL 12601  
Telephone: 312-637-2280  
Email: [dmcgee@libertyjusticecenter.org](mailto:dmcgee@libertyjusticecenter.org)

*Of Attorneys for Plaintiff John Parks  
Pro Hac Vice*

Zachariah H. Allen  
Taylor B. Lewis  
Karen M. O'Kasey  
Hart Wagner, LLP  
1000 SW Broadway, Ste. 2000  
Portland, OR 97205  
Telephone: (503) 222-4499  
Email: [zha@hartwagner.com](mailto:zha@hartwagner.com)  
[tbl@hartwagner.com](mailto:tbl@hartwagner.com)  
[kok@hartwagner.com](mailto:kok@hartwagner.com)

*Of Attorneys for Defendants Lake Oswego  
School Board and Lake Oswego School  
District*

DATED this 3<sup>rd</sup> day of February, 2026.

Luke D. Miller  
Miller Bradley Law, LLC  
1567 Edgewater Street NW, Pmb 43  
Salem, OR 97304  
Telephone: (800) 392-5682  
Email: [luke@millerbradleylaw.com](mailto:luke@millerbradleylaw.com)

*Of Attorneys for Plaintiff John Parks*

Beth Plass  
Karen M. Vickers  
Vickers Plass LLC  
5200 SW Meadow Rd., Ste. 150  
Lake Oswego, OR 97035  
Telephone: (503) 726-5975  
Email: [bplass@vickersplass.com](mailto:bplass@vickersplass.com)  
[kvickers@vickersplass.com](mailto:kvickers@vickersplass.com)

*Of Attorneys for Defendants Marshall  
Haskins and Portland Public Schools*

McEWEN GISVOLD LLP

By: s/ Jonathan M. Radmacher  
Jonathan M. Radmacher, OSB No. 924314  
*Of Attorneys for Defendant Oregon  
School Activities Association*

CERTIFICATE OF SERVICE

Page 1 of 1

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