

**Case Study:**  
**Nakashima v. Oregon State Board of Education, 344 Or. 497 (2008)**  
**Supreme Court of Oregon**

**Instructions:**

Nakashima v. Oregon State Board of Education is an Oregon Supreme Court case that dealt with issues related to both the First Amendment and the Oregon Constitution. Students should read through the case below and answer the questions after each section. After the case, students should consider the issues in the “Application” section. Throughout the case, students should think about what “freedom of religion” means and how a government should balance respect for religious practices against the requirements of the First Amendment.

**Background Information:**

- The First Amendment of the Constitution states:  
*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”*
- Article 1, Section 20 of the Oregon Constitution states:  
*“No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, does not belong equally to all citizens.”*

**Facts and Procedural History:**

The Oregon Board of Education had placed the Oregon School Activities Association (OSAA) in charge of organizing intermural sports tournaments that included both private and public schools. One of the tournaments organized was a boys and girls basketball tournament, which included Saturday games. OSAA did not schedule games on Sunday as a matter of policy.

The Portland Adventist Academy (Respondent) is a private school, affiliated with the Seventh-Day Adventist faith, that regularly participated in the OSAA basketball tournament. The school requested that their games not be scheduled on Saturday during the day for religious reasons. The respondents asserted that their faith observes Sabbath from sundown on Friday to sundown on Saturday. As part of their Sabbath observance, they may not participate in competitive sports. Originally, the OSAA honored this request and did not schedule the school for Saturday games. However, after receiving complaints from other schools in the tournaments, OSAA informed respondents that they could not accommodate the school’s request any longer.

The school and parents of the students filed a discrimination complaint with the Board of Education, alleging that the OSAA’s policy was discriminatory. The Board of Education concluded that the OSAA’s decision was permissible, and that the accommodation they requested would be an undue hardship on OSAA.

The school requested **judicial review** of this decision, and brought their case to the Oregon Court of Appeals. The Court of Appeals agreed with the students and sent the case back for review. The Board again agreed with OSAA, the case returned to the Court of Appeals, and the Court found that the OSAA had violated ORS 659.850(2) which provides that:

*[n]o person in Oregon shall be subjected to “discrimination” ...in any public elementary, secondary, or community college program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school, or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.*

OSAA then appealed the case to the Supreme Court of Oregon.

**Issues:**

Did the refusal to allow the school to abstain from Saturday games while still participating in the tournament, violate the discrimination statute? Did it violate the Oregon Constitution and/or the U.S. Constitution?

**Questions:**

1. Brainstorm (either individually or with a partner): What arguments would you make as the parents/students/school that this policy should be changed?
2. Read the selected portion of the First Amendment under “Background Information.” Do you think that the First Amendment requires the OSAA to respect the religious beliefs of the students and not require them to play on Saturday? Why or why not?
3. Is your answer to the previous question affected by the fact that the students attend a private school or play in a tournament that includes public schools?
4. The OSAA does not schedule any games on Sunday as a matter of policy. Do you feel this favors certain groups over others?
5. Before reading the arguments and the decision the court reached, write a few sentences predicting what you think the outcome will be and why.
6. Go back and examine how the case reached the Supreme Court of Oregon. Why is it important that we allow higher courts to review the decisions of lower courts?

**Arguments at Trial:**

The School Argued:

1. The school argued that even though the policy was not intended to be discriminatory, it had a discriminatory effect that the statute prohibited.
2. The school argued that the First Amendment establishment clause did not prohibit the Board and OSAA from accommodating their request. The government could accommodate their religious request.
3. The school argued that the privileges and immunities clause of the Oregon Constitution would not be violated by accommodating their request.
4. The school argued that accommodating the request would not place an unreasonable burden on OSAA.

OSAA argued:

1. If there was more than an inconsequential burden placed on the OSAA in accommodating this religious request, it would violate the First Amendment prohibitions against state establishment of religion.
2. The proposed accommodation violates the privileges and immunities clause of the Oregon constitution. The burden placed on others in accommodating this request would mean that the school would be given a “privilege” that others would not.
3. The burden placed on them in accommodating the request would be too great.

**Questions:**

1. What arguments do you feel are strongest?
2. Hearing these arguments, how would you rule on this case if you were the judge?

### Who Won?

Technically, the case was **remanded** to the Board of Education to reach a decision consistent with the Supreme Court's findings. The Supreme Court **affirmed** the Court of Appeals and found that neither the U.S. Constitution nor the Oregon Constitution would be violated by accommodating the school's request.

### How did the Court Explain its Decision?

The Court looked to federal case law that held that a law may be discriminatory even if it was not intended to discriminate and even if it is not discriminatory in all cases, if it has the effect of discriminating against a group. The Court stated that the Board of Education used the wrong standard in determining if the school's request should be permitted. Previously, the Board had asked if accommodating the request would place more than a minor burden on OSAA. The Supreme Court stated that instead, the Board on review should ask if not allowing the request is reasonably necessary to further OSAA's goals.

The Court found that accommodating the request would not violate the privileges and immunities clause of the Oregon Constitution. OSAA had argued that accommodating the request would give the school a special privilege. The Court disagreed, and stated that the intent of the statute prohibiting discrimination was clear to give equal opportunities to participate. Similarly, the First Amendment would not be violated by accommodating the request. The Court cited to a large body of case law affirming the principle that government may (and sometimes must) make reasonable accommodations for religious practices.

### Questions:

1. Do you agree with the Court's decision and reasoning? Why or why not?
2. This was a state, as opposed to a federal, case. Why do you think the court found federal law persuasive?

### Application

- This case highlights a fact about the First Amendment that many students commonly misunderstand: the First Amendment prohibits government from establishing state religion, but does not prohibit the government from accommodating religious practices.
- It also stresses another important First Amendment principle: the First Amendment applies to *government* action. OSAA was subject to it because they were given authority by the Board of Education to run a tournament of public and private schools. A private school tournament, organized by a private entity, would not necessarily have the same restriction.

- The school claimed a violation of the discrimination statute enacted by the Oregon legislature. It is important to note that state governments can always create more protections than are given by the U.S. Constitution, but cannot take away those rights.
- The Court stated that the correct test for the Board to apply was for the Board to determine if denying the accommodation was reasonably necessary to furthering the organization's goals, and seemed to suggest that it was important to prevent discrimination. Keep this test in mind, and consider the following scenarios. How would you rule if you were a judge, consistent with this decision?
  - A high school tennis league generally does not permit headgear to be worn during games. Several Islamic students wish to cover their head with a traditional Hijab, and several Jewish students wish to wear a traditional Yarmulke during games. The goals of the tennis league are to promote good sportsmanship, exercise, team unity, and a healthy lifestyle. Should they be allowed to wear these garments?
  - A Christian school joins the league and objects to another team who calls themselves "The Crusaders." The Christian school asks that this team change its name.
  - The Christian school asks that "The Crusaders" be banned from the tournament.
  - Parents ask that no games be held on Sunday, to allow students to attend church services. Students of other faiths object.
  - Another school requests that no games be held on Saturday, but that is the only day the court is available.